

110

cx

A

SYSTEM OF ENGLISH CONVEYANCING,

ADAPTED

June 5

TO

SCOTLAND.

BY

JAMES McNAYR,

WRITER.

*— Si quid novisti rectius istis,
Candidus imperti: Si non, his utere mecum. HOR.*

40
GLASGOW:

PRINTED BY DAVID NIVEN.

M,DCC,LXXXIX.

S
UK
916.7 SC
MAC

TX
M/69295

Recd. July 6, 1882.

P R E F A C E.

CORRECT and approved Precedents or Forms of Deeds of Conveyance, and other writings, as tending to instruct the young Practitioner, and to assist and save time to such as have already acquired a competent knowledge in Conveyancing, have ever been esteemed by those who are engaged in the practice of that particular branch of the Law.

In Scotland however, where, from her intimate intercourse with England and the British Plantations and Colonies in America, the framing and executing of Deeds in the English form, have necessarily become very frequent, so little attention has been given to technical and legal accuracy in the construction of such Deeds, that by the courts of Judicature in England, and in the British Colonies, they have, in many instances, been denied execution.

As the Collections of Precedents in Conveyancing which have been published in England, are numerous, this inattention may appear inexcusable, particularly in those who are professionally interested: But the truth is, that in Scotland, these Collections are of little utility; for, besides comprehending Precedents of a great variety of Deeds not likely ever to be executed in Scotland, whereby enquiry after such as might, is rendered tedious and discouraging,

they all, as being primarily and chiefly calculated for the English Conveyancers, presuppose a knowledge of the Laws and general Customs of England; and consequently give little or no explanation of the nature of the Deeds which they contain: Nor, although it seems necessary that Deeds executed in Britain which are to receive effect in the British Plantations or Colonies in America, and that Deeds executed in Scotland which are to receive effect in England, should be proved, do any of these Collections assign a reason for this, or afford directions for taking and authenticating such proofs.

Hence it occurred to the Editor, that a System of Conveyancing, which exhibited Precedents of such Deeds only, as have been, or are likely to be, executed in Scotland in the English form, with such observations as might elucidate and display their nature, requisites, and effects, would be of considerable utility in Scotland; not only to professional Conveyancers, but to all who are commercially connected with England, or the British Colonies.

To construct such a System, was his design in composing the following sheets; whether he has succeeded, it belongs not to him, but to the Public, to determine.

GLASGOW,

4th Sep^r. 1789.

THE

CONSTITUTION

OF THE

UNITED STATES

OF AMERICA

IN

1787

BY

THE

CONVENTION

OF

1787

IN

1787

BY

THE

CONVENTION

OF

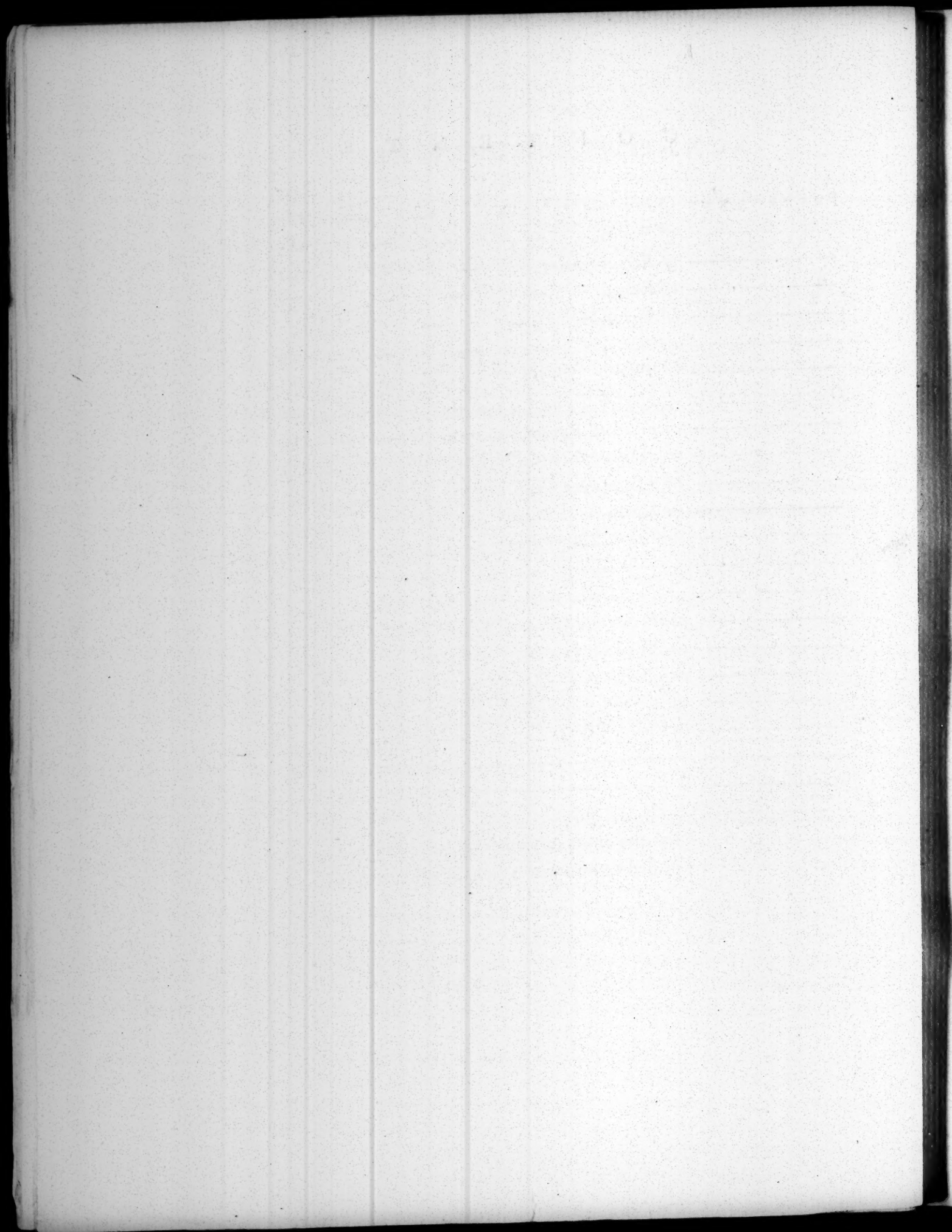
C O N T E N T S.

				Page
PRECEDENTS	<i>of Acknowledgments</i>	—	—	1
_____	<i>of Affidavits</i>	—	—	3
_____	<i>of Agreements</i>	—	—	17
_____	<i>of Appointments</i>	—	—	41
_____	<i>of Apprenticeship, Indenture of</i>	—	—	36
_____	<i>of Assignments</i>	—	—	43
_____	<i>of Bargain and Sale</i>	—	—	67
_____	<i>of Bonds</i>	—	—	69
_____	<i>of Certificates</i>	—	—	77
_____	<i>of Charter Party</i>	—	—	79
_____	<i>of Confirmations</i>	—	—	81
_____	<i>of Covenants</i>	—	—	87
_____	<i>of Defeasance</i>	—	—	93
_____	<i>of Exchange</i>	—	—	97
_____	<i>of Feoffment</i>	—	—	101
_____	<i>of Gifts</i>	—	—	103
_____	<i>of Grants</i>	—	—	105
_____	<i>of Lease and Release</i>	—	—	111
_____	<i>of Letters of Attorney</i>	—	—	133
_____	<i>of Manumission of Slaves</i>	—	—	155
_____	<i>of Marriage Settlements</i>	—	—	157
_____	<i>of Mortgages</i>	—	—	163

C O N T E N T S.

vii

	<i>Page</i>
PRECEDENTS <i>of Partition</i> — — —	187
————— <i>of Receipts</i> — — —	189
————— <i>of Reconveyances</i> — — —	191
————— <i>of Releases</i> — — —	195
————— <i>of Surrenders</i> — — —	203
————— <i>of Uses</i> — — —	209
————— <i>of Wills</i> — — —	215
OBSERVATIONS <i>on English Tenures</i> — —	221
————— <i>on Freehold Estates</i> — —	229
————— <i>on Estates less than Freehold</i> —	237
————— <i>on Estates upon Condition</i> —	239
————— <i>on Estates in Remainder and Reversion</i>	245
————— <i>on Title to Things Real by Descent</i> —	251
————— ————— <i>by Purchase</i> —	254
————— <i>on the Essential Requisites of English Deeds</i>	255
————— <i>on the Several Species of English Deeds</i>	267
————— <i>on Alienation by Matter of Record</i> —	279
————— <i>on Alienation by Special Custom</i> —	291
————— <i>on Alienation by Devise</i> — —	293
————— <i>on Title to Things Personal by Marriage</i>	295
————— ————— <i>by Testament</i>	297
————— ————— <i>by Administration</i>	299
————— <i>on the Act 5th George II. entitled, "An act "for the more easy recovery of debts in his "Majesty's Plantations and Colonies in Ame- "rica."</i>	305



ACKNOWLEDGMENTS.

I

* *Acknowledgment, or Concord of a Fine, Sur Cognizance de droit come ceo, &c. taken by Commissioners in Virtue of a Writ of Dedimus Potestatem.*

AND the agreement is such, to wit, That the aforesaid A and B, No. I.
have acknowledged the aforesaid tenements, with the appurtenances, to be the right of him the said C, as those which the said C hath of the gift of the aforesaid A and B; and those they have remised and quitted claim from them, and their heirs, to the aforesaid C and his heirs for ever. And farther, the said A and B have granted for themselves, and for their heirs, that they will warrant to the aforesaid C, and his heirs, the aforesaid tenements, with the appurtenances, against all men for ever; and for this recognition, remise, quit-claim, warranty, fine, and agreement, the said C hath given to the said A and B, Five Hundred Pounds Sterling.

Seals of the }
Commissioners.



A.
B.

Taken and acknowledged, the — day of — in the — year
of the reign of King George the third, and in the year of our
Lord —. Before us, D.
E.

If the Acknowledgment be made by one cognizor at one time, and by another at another time, make separate captions, thus, "Taken and acknowledged by the aforesaid A, the — day of — &c. and by the aforesaid B, the — day of — &c."

When the Acknowledgment is taken, the commissioners must return the dedimus potestatem, thus, "The execution of this writ appears in a certain schedule hereunto annexed." But the Præcipe, and the Acknowledgment, or Concord (which should be written on parchment, and to which the commissioners must set their seals) with the Affidavit,† (which should also be written on parchment) must be previously annexed to the dedimus potestatem.

* See Observations on Alienation by Matter of Record, Sect. 6. 23.

† See Observations, on Alienation by Mat. of Record, Sect. 26, 27. And Affidav. No. 17.

ACKNOWLEDGMENTS.

‡ *Acknowledgment of a Deed, to supply the want of a Fine, for barring the Right of Dower, &c.*

No. II.

BE IT REMEMBERED, That on this — day of — personally came and appeared before me A, of — Lord Provost, and chief Magistrate of the city of — in that part of the kingdom of Great Britain called Scotland, B, of — &c. and C his wife, who severally acknowledged, That they did respectively sign, seal, and as their act and deed deliver the within written deed or indenture (or “the deed or indenture hereunto annexed, marked with the letter O.”) And the said C, being by me examined, separate and apart from her said husband, did acknowledge and declare, that she did sign, seal, and as her act and deed, voluntarily deliver the said deed or indenture, of her own free will and accord, without any compulsion from her said husband, or from any other person whomsoever. A.

‡ *Acknowledgment of a Deed to supply the want of a common Recovery, for barring Estates-tail, and Remainders, and Reversions.*

No. III.

BE it remembered, That, &c. (as in the foregoing Precedent to “marked with the letter O.”) To make the same effectual to bar entails, reversions and remainders, and to pass the estates within (or “thereby”) granted, and the said C, being by me examined, separate, &c. &c. (as in the foregoing Precedent.) A.

‡ See Observations on the Essential Requisites of English Deeds, Sect. 26.

* A F F I D A V I T S.

*Glasgow.*N^o. I.

A Of the city of Glasgow in Scotland, Merchant, maketh oath and faith, that B of the city of London, is justly and truly indebted unto this deponent, and C, D, E, his Partners in trade, (under the name and firm of C, D and Co.) in the sum of _____ for goods, sold and delivered by this deponent, and his said Partners to the said B, for which said sum of _____ sterling, he, this deponent, hath not, nor hath any or either of his said Partners, to his knowledge or belief, received any security or satisfaction whatsoever, save and except two bills, drawn by the said C, D and Co. and accepted by the said B, the one for _____ sterling, payable three months after date, and the other for _____ sterling, payable four months after date. The former of which bills bears date the _____ day of _____ and the latter the _____ day of _____.

By a co-
partner for
goods sold &
delivered.

A.

SWORN at the city of GLASGOW, }
Before me H, Lord Provost and chief } H.
Magistrate of the said city, this _____
day of _____ in the year 17____.

*Glasgow.*N^o. II.

A Of the city of Glasgow in Scotland, Clerk or Book-keeper to B, of the said city, Merchant, being duly sworn, maketh oath and faith, that he has lived as a Book-keeper with the said B, since the _____ day of _____ and is well acquainted with all his transactions in business; and this deponent farther saith, that on or about the _____ day of _____ he, this deponent, rendered a true copy of the account hereunto annexed, marked O, entitled _____ unto C, then of the said city of Glasgow; but bound for the island

By a clerk
of the credi-
tor.

* See Observations on the Essential Requisites of English Deeds, Sect. 10.

A F F I D A V I T S.

of ———: And that he the said C, acknowledged the said account to be just, and promised payment of the amount thereof being ——— sterling, and that no part thereof has been since paid to the said B, or to any other person or persons in trust for him, to the knowledge or belief of this deponent. For which said sum of ——— sterling, the said B hath not received any security or satisfaction whatsoever, to the knowledge or belief of this deponent.

A.

SWORN, &c.

Glasgow.

N^o. III.

By a clerk
of the credi-
tor, to a debt
due by a per-
son abroad, for
goods sold &
delivered —
premiums of
insurance — &
monies ad-
vanced.

* **A** Of the city of Glasgow in Scotland, Clerk or Book-keeper to B of the said city, Merchant, being duly sworn, maketh oath and faith, that he, this deponent, lived as a Clerk or Book-keeper with the said B, from the — day of — to the — day of —: And that on or about the — day of — the said B by the directions of C (*if in writing say*, “by the directions of C, contained in his missive-letter, or writing hereunto annexed, marked O,”) shipped to and for the said C on board a certain ship or vessel, called the — then lying at anchor in the harbour of — bound to the island (or colony) of — the several articles of goods and merchandise, mentioned in the account (or invoice) hereunto annexed, marked P, and that the respective prices charged in such account are moderate and reasonable, and the common and ordinary prices for which such goods and merchandise were sold to others at the time above mentioned. And this deponent farther faith, that in or about the month of — in the year — he the said B, by the direction of the said C, in and by his letter hereunto annexed, marked S, paid the sum of — as a premium of insurance on the sum of — insured on goods shipped, or to have been shipped, on board the ship, — from the said island (or colony) of — to —. And that the said B, did also on or about the — day of — pay the sum of — in virtue of the draught (or bill of exchange) of him the said C, here-

* See Observations on the Essential Requisites of English Deeds, Sect. 28. and Observations on the Act 5th Geo. II.

unto annexed. (*And so on, as all the different charges may require.*) And this deponent farther saith, that in the account current hereunto annexed, marked R, he the said C, hath got all just and due credits according to the best of this deponent's knowledge and belief, and that there remained justly due and owing from the said C to the said B, on the — day of — last, on such several dealings and transactions, the full and just sum of — sterling money of Great Britain, including interest and commissions, as charged in the said annexed account current. A.

SWORN, &c.

Glasgow.

N^o. IV.

* In the matter of B, a Bankrupt.

A Of the city of Glasgow in Scotland, Merchant, maketh oath and faith, that B, the person against whom a commission of bankruptcy hath lately been awarded and issued, was, at and before the date and suing forth of the said commission, and still is, justly and truly indebted unto this deponent, in the sum of — on the balance of accounts for goods sold and delivered, for which said sum of — he, this deponent, hath not received any security or satisfaction whatsoever. A.

By the creditor, to a debt due by a bankrupt in England, for goods sold and delivered.

SWORN, &c.

Glasgow.

N^o. V.

In the matter of B, a Bankrupt.

A Of the city of Glasgow in Scotland, maketh oath and faith, that B, the person against whom a commission of bankruptcy hath lately been awarded and issued, was, at and before the date and suing forth of the said commission, and still is, justly and

* See Observations on the Essential Requisites of English Deeds, Sect. 30. and Certificates, No. 3.

truly indebted unto this deponent, in the sum of _____ on the
 For money lent, balance of accounts — and premiums of insurance. balance of accounts — any security or satisfaction whatsoever; save and except a promissory note, under the hand of the said B, for _____ sterling, payable two months after date, to Messrs. C and D, and by them indorsed to this deponent, which said note is dated the _____ day of _____.

A.

SWORN, &c.

*Glasgow.*N^o. VI.

In the matter of B, a Bankrupt.

By a co-partner, for a total loss on a policy of insurance.

A Of the city of Glasgow in Scotland, Merchant, maketh oath and faith, that B, the person against whom a commission of bankruptcy hath lately been awarded and issued, was, at and before the date and suing forth of the said commission, and still is, justly and truly indebted unto this deponent, and C, D, E, his partners in trade, in the sum of _____ sterling, for a total loss on a certain policy of insurance, settled and adjusted according to the usage and custom of Lloyd's Coffee-house, and underwritten by the said B, on or about the _____ day of _____ on freight upon a certain ship or vessel, called the _____ master, from the island of _____ to any port in Britain; for which said sum, or any part thereof, this deponent hath not, nor hath any of his said partners, to his knowledge or belief, or for his use or their use, received any security or satisfaction whatsoever, save and except the said policy.

A.

SWORN, &c.

A F F I D A V I T S.

7

Glasgow.

N^o. VII.

In the matter of B, a Bankrupt.

A Of the city of Glasgow in Scotland, Merchant, maketh oath and faith, that B, &c. was, at and before the date and suing forth of the said commission, and still is, justly and truly indebted unto this deponent, in the sum of ——— by virtue of a policy of insurance, made out in the names of ——— and subscribed by the said B, on or about the ——— day of ——— and before he became bankrupt, for the sum of ——— upon goods laden, or to be laden, on board the ship ———, ——— master, for a voyage, at and from Jamaica to London, at ——— premium, and in case of loss to abate two per cent: And by the said policy, it was and is agreed, that the said goods and merchandise should be valued at ——— sterling, and no other or farther proof of interest should be required than by the said policy: And the assurers thereby agreed that the production of the said policy should be a sufficient proof, not only of the amount or value of the interest as therein before agreed, but also of the property of the assured in the said goods, without any other evidence whatsoever. And it was and is by the said policy farther agreed, that in case the ship and cargo were, and should be, disposed of at Jamaica, to return ——— pounds per cent. (warranted to depart with convoy.) And this deponent farther faith, that the said ship, in a due prosecution of her voyage for London, was lost on the ——— by means whereof an average-loss accrued on the said policy, which said average-loss, the other underwriters on the ——— day of ——— adjusted and settled, at ——— per cent. by subscribing their names to an endorsement on the back of the said policy, in the words and figures following, ——— that the said B is indebted unto him, this deponent, in the sum of ——— in respect of the said loss so adjusted and settled at ——— per cent. as aforesaid, for which said sum of ——— or any part thereof, this deponent hath not had or received any security or satisfaction whatever, save and except the said policy.

Another —

A.

SWORN, &c.

*Glasgow.*N^o. VIII.

In the matter of B, a Bankrupt.

To a debt
due by bill of
exchange.

A Of the city of Glasgow in Scotland, maketh oath and faith, that B, &c. was, at and before the date and suing forth of the said commission, and still is, justly and truly indebted to this deponent, in the sum of ——— on the balance of accounts for money paid and advanced by this deponent, to Messrs. C, D and Co. upon two bills of exchange, both drawn by the said bankrupt, upon E, F and Co. Merchants in ——— and accepted by them, and both payable sixty days after date to the said Messrs. C, D and Co. or order, one of them for the sum of ——— and the other for the sum of ——— for value in account, both of which said bills of exchange, are dated the ——— day of ——— and severally endorsed by the said C, D and Co. And this deponent farther faith, that he hath not had or received the said debts, or any part thereof, save the aforesaid two bills of exchange.

A.

SWORN, &c.

*Glasgow.*N^o. IX.

In the matter of B and C, Bankrupts.

To a debt
due by bond.

A Formerly of ——— in the county of ——— but now of ——— in the county of ——— maketh oath and faith, that B and C, Merchants and Partners, against whom a commission of bankruptcy hath been lately awarded, were, before the date and suing forth of the said commission, and still are, justly and truly indebted to this deponent, in the sum of one hundred pounds for principal money, lent by this deponent, before that time, to the said B and C, and in the sum of ——— for interest for the same. And this deponent farther faith, that he hath not had or received any manner of satisfaction or security whatsoever, for all or any part of the said one hundred pounds and interest, other than and except one bond or obligation, bearing date the ——— day of ——— given and entered into by the said B and C unto this deponent, in the penal sum of two hundred pounds.

A.

SWORN, &c.

A F F I D A V I T S.

9

Glasgow.

N^o. X.

In the matter of C, a Bankrupt.

B _____ maketh oath, that C, &c. was, at and before the date and suing forth of the said commission, and still is, justly and truly indebted unto this deponent, in the sum of _____ for money lent by this deponent to the said C, before he became bankrupt; for which said sum of _____ or any part thereof, he, this deponent, hath not received any security or satisfaction whatsoever; save and except a promissory note, dated the _____ day of _____ under the hand of the said _____ whereby he promises to pay this deponent, or order, two months after date, the sum of _____.

To a debt due by promissory note.

B.

SWORN, &c.

Glasgow.

N^o. XI.

In the matter of D, a Bankrupt.

B Of _____ widow and administratrix of all and singular the goods and chattels, rights and credits, which were of C, at the time of his death, maketh oath, that D, &c. was, at and before the date and suing forth of the said commission, and still is, justly and truly indebted unto this deponent, in the sum of _____ for goods sold and delivered by the said C, in his lifetime, to the said D, before he became bankrupt; for which said sum of _____ or any part thereof, this deponent hath not received, nor did the said C, in his lifetime, to her knowledge or belief, receive any security or satisfaction whatsoever.

By an administratrix, to a debt due to her husband.

A.

SWORN, &c.

B

Glasgow.

N^o. XII.

In the matter of C, a Bankrupt.

To the seeing creditors sign an English bankrupt's certificate.

* **B** Of the city of _____ in Scotland, Attorney at law, maketh oath, that he, this deponent, was present and did see D, for himself and company, and E, F and G, four of the creditors of the said bankrupt severally subscribe their names at the foot of a certain instrument in writing, purporting to be a certificate, under the hands and seals of the major part of the commissioners named and authorized in, and by, a commission of bankrupt, awarded and issued against the said C, that the said C, the bankrupt, had in all things conformed himself to the several statutes made and now in force concerning bankrupts, whereby they testify and declare their consent to the said commissioners signing the said certificate, and that the said bankrupt may have such allowance and benefit as are given to bankrupts by an Act of Parliament, made and passed in the fifth year of the reign of his late Majesty, King George the second, entitled, "*An Act to prevent the committing of frauds by bankrupts,*" and be discharged from his debts, in pursuance of the same Act.

SWORN, &c.

B.

Glasgow.

N^o. XIII.

In the matter of C, a Bankrupt.

To the seeing creditors sign consent at the foot of a petition, to supersede a commission of bankrupt.

B Of, &c. maketh oath, that he, this deponent, did this _____ day of _____ see D, E, F and G severally sign their names to a consent in writing, subscribed to the prayer of a petition of the said C, directed, and intended to be preferred to the Lord High Chancellor of Great Britain, most humbly praying that his

* See Observations, on the Essential Requisites of English Deeds, Sect. 30. and Certificates, No. 3.

A F F I D A V I T S.

11

Lordship would be pleased to order that the said commission of bankrupt therein mentioned to have been awarded and issued, and then in prosecution against the said C, might be immediately superseded, and that a writ of *superfedeas* might forthwith issue for that purpose, or to that effect. And this deponent farther saith, that the names, D, E, F, G, signed and subscribed to the said consent in writing, are of the respective proper hand-writing of the said D, E, F, and G.

SWORN, &c.

B.

Glasgow.

No. XIV.

B Of ——— Attorney at law, maketh oath and faith, that he, this deponent, together with C of ——— were present and did see D of ——— E his wife, and F of ——— severally sign, seal, and as their several acts and deeds in due form of law, deliver the indentures of lease and release hereunto annexed, and marked with the letters R, S, to and for the uses, intents, and purposes therein mentioned; AND this deponent farther saith, that the names D, E, set and subscribed to the said indenture of lease, are of the respective proper hand-writing of the said D and E, and that the names D, E, F, set and subscribed to the said indenture of release, are of the respective hand-writing of the said D, E and F parties thereto; AND that in testimony of such due execution of the said indentures of lease and release, he, this deponent, and the said C, did severally set and subscribe their names thereto, as thereby may appear, and that the names B and C, endorsed on the said indentures of lease and release, are of the respective proper hand-writing of this deponent, and the said C.

To the execution of indentures of lease and release.

B.

SWORN at the city of ———
 this ——— day of ——— before
 me H, Lord Provost and chief
 Magistrate of the said city. } H.

B 2

A F F I D A V I T S.

Glasgow.

N^o. XV.

Another.

B Of the city of Glasgow in Scotland, Attorney at law, maketh oath and faith, that he was present and did see C and D his wife, by the name and description of C of ——— and D his wife, sign and seal, and as their several acts and deeds, in due form of law, deliver the two several deeds or indentures hereunto annexed, one of them purporting to be a lease for a year, bearing date the ——— day of ——— instant, and made, or mentioned to be made, between the said C and D his wife, of the one part, and E of the island of ——— in the West Indies of the other part; And the other purporting to be a release, bearing date the ——— day of ——— instant, and made, or mentioned to be made, between the said C and D his wife, of the one part, and the said E of the other part, of ——— (*here mention the subject released*) to and for the uses therein mentioned, and that this deponent as a witness to such execution, together with F, thereunto set and subscribed his name, as thereby may appear.

B.

SWORN at, &c.

Glasgow.

N^o. XVI.

To the execution of a letter of attorney.

B Of the city of Glasgow, in Scotland, Attorney at law, maketh oath and faith, that he, this deponent, together with C, did see D, sign, seal, and as his act and deed, in due form of law, deliver the deed-poll, or letter of attorney, hereunto annexed, bearing date the ——— day of ——— last, And purporting to be a letter of attorney from the said D to E of ——— in the island of ——— Merchant, for the purposes therein mentioned; And this deponent farther faith, that the name "D," set and subscribed to the said deed-poll, or letter of attorney, is of the proper hand-writing of the said D party thereto; And that the names C, B, subscribed as witnesses to the execution of the said deed-poll, or letter of attorney, are of the respective proper hand-writing of the said C, and of this deponent, and farther this deponent faith not.

B.

SWORN at, &c. &c.

Glasgow.

No. XVII.

* **B** Of the city of Glasgow in Scotland, one of the commissioners named in the writ of *dedimus potestatem*, for taking the acknowledgment of the fine hereunto annexed, maketh oath and faith, that he knows C, and D his wife, the cognizors named in the said fine, and that the same was duly signed and acknowledged by them before this deponent, and E the other commissioner named in the said writ, on the day and year (*or on the several days and year or years respectively*) mentioned in the caption (*or several captions*) thereof: And that the said C and D his wife, and that he this deponent and the said E, were at the time of taking and acknowledging the said fine, all of full age and competent understanding. That the said D was solely and separately examined apart from her husband, and freely and voluntarily consented to, and acknowledged the said fine, and that the said cognizors, and each of them knew the same to be a fine to pass his and her estate and estates.

To the
acknowledg-
ment of a
fine.

(*If any erasure or interlineation add*) "And that the rasure (*or rasures,*) interlineation (*or interlineations*) appearing to be made in the body (*or caption*) of the said fine, was (*or were*) made, before any of the parties signed the same, and before any of the said commissioners, signed the said caption (*or captions.*)"

B.

SWORN at the city of _____ in
the county of _____ in Scotland,
the _____ day of _____ in the } H.
year _____ before me H, Lord
Provost and chief Magistrate of
the said city.

* This Affidavit must be written on parchment, see Observations on Alienation by Matter of Record, Sect. 27.

Glasgow.

N^o. XVIII.

To the pro-
pinquity of
one person to
another. * **C** Of the city of Glasgow, in the county of Lanark,
and kingdom of Great Britain, Attorney at law, maketh oath and faith,
that he, this deponent, knew and was well acquainted with D, of the
parish of _____ in the county of _____ and island of _____
Esquire, deceased; That he, this deponent, is intimately acquainted
with E, of the said city of Glasgow, Merchant, and has known,
and been intimately acquainted with the said E, from his infancy
(*or for these — years last past, as the case may be*). That the said
E is, and ever since this deponent knew him, was, acknowledged,
held, deemed and reputed to be the eldest son (*or daughter, &c. &c.*
as the case may be) of the said D deceased; And that to the best of this
deponent's knowledge and belief, he the said E, is the true and lawful
heir (*or the nearest in kin, as the case may be*) of the said D deceased,
and farther this deponent faith not.

SWORN, &c.

C.

Glasgow.

N^o. XIX.

To the au-
thenticity of
an exemplifi-
cation from a
registry. * **C** Of the city of Glasgow, in the county of Lanark,
and kingdom of Great Britain, Attorney at law, maketh oath and
faith, that the instrument in writing hereunto annexed, signed F,
and purporting to be an exemplification or copy, from the registry
of baptisms, for the parish (*or parishes*) of _____ in the county of
Lanark aforesaid, so far as concerns the baptism of E of _____
son (*or daughter, &c. &c. as the case may be*) of D of the parish
of _____ in the county of _____ and island of _____ deceased,
is a true, full, and authentic copy; And that he, this deponent, did
on the _____ day of _____ last past, carefully compare the said
exemplification or copy hereunto annexed with the said registry;

* See Observations on Title to things Personal by Testament and Administration,
Sect. 22. and Note.

And this deponent farther saith, that he was present, and did see F, by the name and description of F of _____, set and subscribe his name to the said exemplification or copy, and that the name F, so set and subscribed thereto, is of the proper hand-writing of the said F, keeper of the said registry: And this deponent also saith, that the said exemplification or copy, hath ever since the same was compared by him as aforesaid, been in his the deponent's custody and possession, and farther this deponent saith not.

C.

SWORN, &c.

Glasgow.

No. XX.

CAPT. C, (*or Lieutenant, &c. as the case may be,*) maketh oath, that he had not, between the 25th December, 17— and 24th June, 17— (*or between the 24th June, 17— and 25th December, 17—*) any other place or employment of profit, civil or military, under his Majesty, besides his allowance of half-pay, as a reduced Captain, (*or Lieutenant, &c. as the case may be*) in _____ late regiment of _____ (*or allowance as* _____ in _____ late troop of Horse Guards, *or* _____ regiment of horse reduced, *as the case may be.**)

By a half-pay Officer, to entitle him to receive his half-pay.

C.

SWORN at _____ before me,
 one of his Majesty's Justices
 of the Peace for the county } H.
 of _____, the _____ day of
 _____, in the year of our
 Lord _____.

* See Letters of Attorney, No. 19.

A F F I R M A T I O N.

*A Quaker's Affirmation.**Glasgow.*

A Of _____ &c. being one of the people called Quakers, solemnly affirms, that, &c. (*as in Affidavits using "affirms," instead of "makes oath," and "affirmant," instead of "deponent."*)

Affirmed at, &c. &c.

A G R E E M E N T S.

For the Sale of an Estate.

Articles of Agreement, indented, had, made, concluded and fully No. I.
agreed upon, the — day of —, between A of —,
Merchant, of the one part, and B of —, Merchant, of
the other part.

FIRST, The said A, for the consideration* of —, of lawful Consideration money of Great Britain, to him in hand, paid by the said B, before the sealing and delivery of these presents, and of the farther sum of —, to be paid as herein after is mentioned, DOTH hereby, for himself,† his heirs, executors, and administrators, and every of them, covenant and agree with the said B, his heirs, executors, and administrators, and every of them, by these presents, THAT he the said A, and all and every other person and persons whomsoever, claiming or to claim any right, title, or interest under him, or any other person or persons whomsoever, of, in, or to the —, and premises herein after mentioned, SHALL and will, at the proper costs and charges of the said B, his heirs and assigns, (except fees for counsel,) on or before the — day of —, by such conveyances, assurances, ways and means in the law, as he the said B, his heirs or assigns, or his or their counsel, learned in the law, shall reasonably devise, or advise, and require, WELL and sufficiently grant, sell, release, convey, and assure to the said B, and his heirs, or to whom he or they shall appoint or direct, ALL that —, situated in —, in the tenure or occupation of D, with proper covenants to be therein contained, that the said —, at the time of such conveyance,

* *A Receipt for the consideration paid down must be granted. See Receipts.*

† *If a man covenants for his heirs only, and not for himself and his heirs, the deed is void, because the granter himself is not bound.*

Covenant to
pay the pur-
chase-money.

Penalty.

is free from all encumbrances, and all other fit and reasonable covenants. IN CONSIDERATION whereof, the said B, for himself, his heirs, executors, administrators, and assigns, DOTH covenant and agree with the said A, his heirs, executors, and administrators, by these presents; That he, the said B, shall well and truly pay, or cause to be paid to the said A, his heirs, executors, or administrators, the aforesaid sum of ———, at the time of executing the said conveyances: AND for the true performance of all and every the covenants aforesaid, each of the said parties bindeth himself, his heirs, executors, and administrators, unto the other of them, his heirs, executors, and administrators, in the penal sum of ———. IN WITNESS whereof, the said parties have hereunto set their hands and seals, the day and year first before written.

Sealed and delivered, being
first duly stamped, in the
presence of }
D.
E.

A.



B.



Another.

No. II.

Articles of Agreement, had, made, concluded, and agreed upon, this — day of —, in the — year of the reign of our Sovereign Lord, George the third, by the grace of God, King of Great Britain, France and Ireland, &c. and in the year of our Lord —, between A, of the city of —, in the county of —, Esquire, of the one part, and B of the same city, Merchant, of the other part, as follows.

Consideration

FIRST of all, the said A, for the consideration of the sum of —, of lawful money of Great Britain, to him in hand, paid by the said B, at or before the sealing and delivery of these presents, and of the farther sum of —, to be paid as herein after is mentioned, (*if none of the money is paid down say,* "In consideration of

the sum of ———, of lawful money of Great Britain, to be paid to him by the said B, pursuant to the covenant and agreement of the said B, herein after, in that behalf, contained,") Doth hereby, for himself and his heirs, covenant and agree with the said B, and his heirs and assigns, and every of them, THAT he the said A, his heirs and assigns, and all and every other person and persons whomsoever, having, or lawfully claiming, or that lawfully shall, may, or can claim, any estate, right, title, or interest, under him, or any other person or persons whomsoever, of, in, or to the ———, and premises herein after-mentioned, (*or thus, "And all and every person or persons seized, possessed of, or entitled to, the lands, &c. herein after-mentioned, in trust for him,"*) Shall and will, at the proper cost and charges of the said B, his heirs and assigns, (except fees to counsel,) on or before the ——— day of ——— next ensuing the date hereof, by such conveyances, assurances, ways and means in the law, (*here may be added, "Be the same by fine, recovery, or otherwise,"*) as he the said B, his heirs or assigns, or his or their counsel, learned in the law, shall reasonably devise, advise, or require, WELL and sufficiently grant, bargain, sell, release, convey, and assure to, and to the use of the said B, his heirs and assigns for ever, or to whom he or they shall appoint or direct, ALL that ———, situated ———, now in the tenure or occupation of C, or his assigns, and let at ———, with covenants to be therein contained, That the said ———, at the time of such conveyance, is free from all encumbrances and demands whatsoever, and with such warranty and other fit and reasonable covenants, as the said B, his heirs or assigns, or his or their counsel, shall reasonably devise and require, as aforesaid; IN CONSIDERATION whereof, the said B, for himself, his heirs, executors, administrators, and assigns, doth hereby covenant, promise, and agree, to and with the said A, his heirs, executors, administrators, and assigns, That he the said B, his, &c. shall and will, well and truly pay, or cause to be paid, to the said A, his, &c. the aforesaid farther sum of ———, at the time of executing the said conveyances and assurances as aforesaid, which said sum, when paid, (with the sum of ———, paid in hand, making together the sum of ———,) is hereby agreed and declared, between the said parties, to be in full, for the absolute purchase of the said ———, so to be conveyed as aforesaid: AND, for the true performance of all and every the covenants and agreements aforesaid, each of the said parties, to these presents, doth hereby bind himself, his heirs, executors, administrators,

Covenant to
pay the pur-
chase-money.

Penalty. and assigns, in the penal sum of ———. IN WITNESS whereof, the said parties have hereunto set their hands and seals, the day of the month, year of the King's reign, and of our Lord, first before written.

Sealed and delivered, &c.

For the Sale of a Copy-hold Estate.

No. III.

Articles of Agreement, indented, had, made, &c. between A, &c. and B, &c.

WHEREAS the said B, has, on the day of the date hereof, contracted and agreed with the said A, for the purchase of the copyhold messuages, lands, tenements, and hereditaments herein after-mentioned, for the sum of ———, of lawful money of Great Britain, to be paid by the said B, to the said A, at and upon the surrendering of the said copyhold messuages, &c. to the use of him, his heirs, and assigns, for ever, according to the custom of the manor whereof the same premises are held. NOW THESE PRESENTS

Confideration WITNESS, That, for and in consideration of ———, of lawful money of Great Britain, to the said A, in hand, paid by the said B, at the sealing and delivery of these presents, the receipt whereof the said A doth hereby acknowledge, and thereof and therefrom, and from every part and parcel thereof, doth acquit, release, and discharge

Covenant to surrender. the said B, and his heirs, &c. He the said A, doth hereby for himself, &c. covenant, &c. to and with the said B, &c. in manner following, that is to say, That he the said A, shall and will, on or before ———, surrender into the hands of the Lord of the manor of ———, in the county of ———, by the rod, by the hands of the Steward of the said manor, or by the hands of two or more customary tenants of the said manor, or otherwise, according to the custom there-

A G R E E M E N T S.

21

of, ALL that &c. TO the only use and behoof of the said B, his heirs, and assigns, for ever. AND, for the true performance, &c. (*Covenants by A that he is lawfully seized——has power to surrender——for quiet enjoyment——is free from encumbrances——except quit-rent to the Lord of the manor——and for farther assurance,*)——see Covenants. IN WITNESS, &c.

Scaled and delivered, &c.

To make an Assignment of a Lease.

*Articles of Agreement, indented, &c. the —— day of ——, in No. IV.
the year ——, between A of ——, &c. and B of ——.*

WHEREAS A hath, by his deed indented, dated ——, DEMISED, and to FARM-LET, unto the said A, ALL that messuage, &c. TO hold to him the said A, and his &c. (*reciting the lease,*) as by the said deed, relation thereto being had, will more fully, and at large, appear: NOW, the said A, in consideration &c. Consideration DOTH hereby, for himself, &c. THAT he the said A, shall and will, at the costs of him, the said B, his executors, or administrators, by deed indented, assure, assign, and grant over, to the said B, his executors and administrators, the said messuage, &c. and all his estate, right, title, and demand therein, To HAVE and to HOLD to the said B, his executors and administrators, during the residue of the said term of years then to come, and unexpired, of and in the same, by virtue of the said deed indented, under the rents, covenants, and agreements, therein specified. IN WITNESS whereof, the said parties have hereunto set their hands and seals, the day and year before written.

Scaled, &c.

Articles of Agreement before Marriage.

No. V.

Articles of Agreement, tripartite, indented, had, made, concluded, and fully agreed upon, the — day of —, between A of —, of the first part, B of —, daughter of E of —, of the second part, C of —, and D of —, of the third part, as follows.

WHEREAS the said B is seized to her, and her heirs, in fee simple, of and in certain lands, messuages, or tenements, with the appurtenances, situated, lying, and being in —: AND WHEREAS a marriage is shortly intended to be had and solemnized, between the said A and B, with whom the said A is to have and receive two thousand pounds in money, over and besides the lands and premises above-mentioned, as and for her marriage portion: IT IS THEREFORE covenanted and agreed, by and between the said parties, to these presents, in manner and form following, That is to say,

FIRST, The said A, for himself, his heirs, executors, and administrators, doth covenant and agree, to and with the said C and D, their heirs and assigns, that they, the said A, and B his intended wife, (in case the said intended marriage shall take effect,) by fine, and other good and sufficient conveyances in the law, shall settle and assure, ALL these lands, messuages, or tenements, with the appurtenances, whereof she the said B is seized as aforesaid, to the use and behoof of the said A, and his assigns, during the term of his natural life; and from and after the determination of that estate, then to the use and behoof of the said C and D, their heirs and assigns, during the natural life of the said A, in trust to preserve and support the contingent remainders herein after-limited; And from and after the decease of the said A, then to the use and behoof of the said B, his said intended wife, for and during the term of her natural life, and from and after her decease, then to the use and behoof of the heirs of the body of the said B by the said A, lawfully to be begotten; And, in default of such issue, then to the use and behoof of the said B, her heirs and

assigns for ever, and to and for no other use, intent, or purpose whatsoever: AND WHEREAS the said B is also possessed of, or intrusted in, for the remainder of a term of ninety-nine years, (if she shall so long live,) ALL that messuage, or tenement, with the appurtenances, situated in ———, by virtue of a certain indenture of lease thereof granted to the said B, by E of ———: NOW the said A, for himself, his heirs, executors, and administrators, doth farther covenant, grant, and agree, to and with the said C and D, their heirs and assigns, that they the said A, and B his said intended wife, in case the said marriage shall take effect, shall and will, by like good and sufficient conveyances in the law, settle and assure the said messuage or tenement, with the appurtenances, in such manner as the same may be held and enjoyed, and the rents and profits thereof may be had, received, and taken by the said A, and his assigns, during so many years of the said term as he shall happen to live; AND from and after his decease, then by the said B, his said intended wife, and her assigns, for and during so many years of the said term as she shall happen to live; AND from and after her decease, then by such children of the said B, by the said A to be begotten, in such manner as it may not be in the power of the said A, to defeat such their issue; AND in default of such issue, then by the executors, administrators, or assigns of the said B, and upon no other trust, and to and for no other use, intent, or purpose whatsoever.

AND FORASMUCH AS the said A, is not at present seized or possessed of an estate, sufficient to make a jointure for the said B, his intended wife, equivalent to her fortune, The said A doth, for himself, his heirs, executors, and administrators, covenant, grant, and agree, to and with the said C and D, their heirs and assigns, that, in case the said intended marriage shall take effect, and he the said A shall happen to die in the lifetime of the said B, that then he the said A, shall and will, by his Last-will and Testament, in writing, or otherwise, give and assure unto the said B, the sum of two thousand pounds, of lawful money of Great Britain; or the full value thereof in lands, tenements, goods, or chattels, to be at her own proper disposal, and to be by her received and taken to her own proper use and benefit.

IN WITNESS, &c.

No. VI. *Agreement for the Sale of a Freehold Estate, mortgaged to the intended Purchaser, and to a third person. The Purchaser's Mortgage to be deducted—the Mortgage to the third person to be paid off—some money to be paid to the Seller—and a rent-charge to be granted out of the Premises for the residue.*

Articles of Agreement, indented, &c. between A of ———, of the one part, and B of ———, of the other part, as follows.

WHEREAS there is now due and owing by the said A, to C of ———, on mortgage and security of ———, herein after-mentioned, or some part thereof, the sum of ———, of principal money, with an arrear of interest; AND there is likewise due by the said A, to the said B, on security of the said ———, and premises, or some part thereof, by two several mortgages, the sum of ———, principal money, with an arrear of interest. AND WHEREAS the said A has agreed with the said B, for the absolute sale of the said ———, and all his the said A's estate, equity of redemption, right, title and interest therein, unto him the said B, and his heirs. IN CONSIDERATION WHEREOF, the said B has agreed, as well to pay to the said A, for the absolute purchase of the said ———, so much monies, as, together with the aforesaid principal sums of ———, and ———, and the interest in arrear for the same, shall amount to the full sum of ———: AND also to pay unto the said A, an annuity, or yearly sum of ———, during his life, payable, &c. AND likewise, to acquit, release, and indemnify the said A, and his &c. of and from the payment of the said several sums of ———, and ———, which are to be deemed part of the purchase money, and as such to be paid off, and released respectively, by the said B. NOW THESE PRESENTS WITNESS, That the said A, in pursuance of the said recited agreement on his part, and in consideration of the covenant and agreement herein after-contained on the part of the said B, DOTH, hereby, for himself, &c. covenant, &c. to and

with the said B, and his &c. That he the said A, or his heirs, shall and will, on or before the — day of — next ensuing, make out a good title unto, and by such good and sufficient conveyances and assurances in the law, as he the said B, his heirs or assigns, or his or their counsel shall advise, or require, effectually convey and assure, or cause to be conveyed and assured unto, and to the use of the said B, his heirs, &c. or to such person or persons as he or they shall, in that behalf, nominate and appoint, free from all encumbrances, whatsoever, (excepting the mortgages above mentioned,) ALL that, —: AND THESE PRESENTS ALSO WITNESS, that the said B, in pursuance of the said recited agreement on his part, and in consideration of the covenant and agreement herein before contained, on the part of the said A, DOTH hereby, for himself, &c. covenant, &c. to and with the said A, his &c. That he the said B, his &c. shall and will, well and truly pay, or cause to be paid, unto the said A, his &c. at the time of making and executing such conveyances and assurances as aforesaid, so much current money of Great Britain, as, together with the said several sums of —, and —, and the interest then due and in arrear for the same, will make up and amount to the full sum of —; And shall also, well and truly pay off, and discharge the said sum of —, and interest to grow due for the same, unto the said C, and indemnify him the said A therefrom; AND shall also acquit and release him from the payment of the aforesaid sum of — and interest; AND also, shall and will, well and truly pay, and to the satisfaction of the said A, or his counsel, secure to be paid out of the said —, and premises, unto him the said A, or his assigns, during his life, an annuity or yearly rent-charge of — pounds, of lawful money of Great Britain, the said annuity, or yearly rent-charge, to be paid to him the said A, by two equal half-yearly payments in every year; the first half-yearly payment, in case such conveyances or assurances shall be made and perfected as aforesaid, at or before the aforesaid — day of — next ensuing: Which said several sums of money, and annuity, or rent-charge, so to be paid and secured, by the said B, together with the said sum of —, so due and owing to him, on security of the aforesaid premises, and for which the said A is to be acquitted and released as aforesaid, Are hereby declared, by the said parties, to be in full for the absolute purchase of the said —, and of the equity of redemption thereof. IN WITNESS whereof, &c.

No. VII. *Agreement by Indenture, between a Mortgager and a Mortgagee, whereby the Mortgagee covenants to take money due on several Mortgages, by Instalments.*

THIS * INDENTURE, made the — day of —, in the — year of the reign of our Sovereign Lord, George the third, by the grace of God, King of Great Britain, France and Ireland, defender of the faith, &c. and in the year of our Lord —, between B of —, of the one part, and C of —, of the other part. WHEREAS the said B, by indenture bearing date on or about the — day of — last past, did, in consideration of the sum of —, of lawful money of Great Britain, demise, by way of mortgage, unto the said C, his executors, administrators, and assigns, several lands, tenements, and hereditaments, in —, in the county of —, for the term of one thousand years, conditioned to be void on payment of the said sum of — and interest; and did afterwards borrow of the said C, the farther sum of —, and, by endorsement on the same in part recited indenture, bearing date the — day of —, Did declare the said mortgaged premises should stand and be a security, as well for the last mentioned sum of — and interest, as for the before mentioned sum of — and interest: AND WHEREAS the said B, having occasion for a farther sum of money, hath on the day of the date hereof, borrowed of the said C, the sum of —, and for securing the repayment thereof, with interest, hath released the proviso in the first herein partly recited indenture, and ratified and confirmed the premises, mentioned and contained in the said indenture, to the said C, his executors, administrators, and assigns: And the said B having occasion for the farther sum of —, which the said C hath lent, advanced, and paid to him, and for securing the repayment whereof, with interest, the said

* When there are covenants to be performed by two or more parties, an agreement may be turned into an Indenture of Covenants, and begin thus, "This Indenture, &c." If one person only covenants to another, it may begin as a Deed-poll thus, "To all, &c." or, "Know all, &c."

B, hath, by indenture, bearing even date herewith, demised, by way of mortgage, to the said C, his executors, administrators, and assigns, sundry other lands, tenements, and hereditaments, in ———, for the term of five hundred years; so that the whole principal monies, lent and advanced by the said C, to the said B, amount to the sum of ———. NOW THIS INDENTURE WITNESSETH, that the said B, DOTH for himself, his heirs, executors, and administrators, covenant and agree, to and with the said C, his executors, administrators, and assigns, that although the same are several and distinct mortgages, yet, that all the lands, tenements, and hereditaments, thereby mortgaged as aforesaid, and all and every part and parcel thereof, shall stand and be a security for the said sum of ———, and shall not be redeemed, or be redeemable, until the whole of the aforesaid sum of ———, be fully and completely satisfied and paid; AND the said C, doth hereby for himself, his executors, administrators, and assigns, covenant and agree, to and with the said B, his heirs, executors, administrators, and assigns, that he will take and accept of the aforesaid sum of ———, by such parts or instalments, as he the said B, his heirs, executors, administrators, or assigns, shall think fit to pay; he the said B, his heirs, executors, administrators, and assigns, not paying less at a time, than the sum of ———, and giving to the said C, his executors, administrators, and assigns, at least two months previous notice of such intended payment, or instalment. IN WITNESS, &c.

No. VIII.

Indenture of Covenants; or, Agreement by Indenture, between a Mortgager of a Plantation, &c. and the Mortgagee, whereby the Mortgager, for a certain consideration, Covenants to ship and consign to the Mortgagee, the whole Sugars to be made on the Mortgaged Premises, &c. for a certain term of years, and afterwards, until the whole sums secured by the Mortgage be satisfied and paid. And the Mortgagee Covenants to accept and receive such consignments, in payment of the sums so secured, &c.

* **T**HIS INDENTURE, made, &c. between B of the city of ———, in that part of Great Britain called Scotland, Merchant, of the one part, and A, formerly of the island of ———, but now of ———, in the county of ———, in Scotland aforesaid, Esquire, of the other part. WHEREAS in and by certain indentures of lease and release, by way of mortgage, the release bearing date the ——— day of ———, and made, or mentioned to be made, between the said A of the one part, and the said B of the other part, IT IS WITNESSED that he the said A, in consideration of the sum of five thousand pounds, of lawful money of Great Britain, paid to him in hand, by the said B, granted, bargained, sold, alienated, enfeoffed, released and confirmed unto the said B, his heirs and assigns, ALL these two plantations and sugar-works, of him the said A, commonly called and known by the names of ——— Plantations, lying contiguous to each other, in the parishes of ———, in the island of ———, containing ——— acres, more or less, and houses, buildings, and appurtenances; together with all and every the negro and other slaves, mules, steers, cattle, stock, plantation-utensils, and implements, upon and belonging to the said two several plantations respectively,

* See Mortgages, No. 1.

with their issue, increafe, and appurtenances, To HOLD unto, and to the ufe of the faid B, his heirs and affigns for ever, according to the nature and quality of the fame premises refpectively; fubject, nevertheless, to a proviso, or condition of redemption, contained in the faid indenture of releafe, upon payment by the faid A, his heirs, executors, or administrators, unto the faid B, his executors, administrators, or affigns, at or within the Tontine Coffee-houfe, in the city of Glasgou, on or before the — day of —, in the year of our Lord —, of the aforefaid fum of five thoufand pounds, of lawful money of Great Britain, with intereft thereon, at and after the rate of five pounds per centum, per annum, AND alfo upon payment by the faid A, his heirs, executors, or administrators, unto the faid B, his executors, administrators, or affigns, of all fuch farther and other fum and fums of money, as he fhould, at any time, or times thereafter, before the redemption of the faid premises, advance, lend, or pay to, or for the ufe, or on account, of him the faid A, with intereft for the fame, after the rate aforefaid, at the expiration of three months next, after the fame fhould have been fo advanced, lent or paid: AND WHEREAS, for the better fecuring the payment of the faid principal fum of five thoufand pounds, with intereft thereon as aforefaid, and the faid farther and other fum or fums of money, with intereft for the fame; The faid A hath alfo entered into, and executed unto the faid B, a certain bond or obligation, bearing an equal date with the faid indenture of releafe, in the penal fum of ten thoufand pounds, of like lawful money of Great Britain, with a condition there underwritten, for the true and faithful performance of all and every the covenants, articles, clauses, proviso's, payments, conditions, and agreements, which, in the faid recited indenture of releafe, contained on the part and behalf of him the faid A, his heirs, executors, or administrators, are and ought to be obferved, performed, fulfilled, accomplished, paid, done and kept, according to the true intent and meaning of the faid indenture: AND WHEREAS in confideration of the indulgence herein after mentioned, the faid A, hath agreed to fhip and confign unto the faid B, his executors, administrators, or affigns, the whole of the fugars to be made upon the faid two feveral plantations, called —, and —; and alfo upon the undivided moiety or equal half part of him the faid A, of and in a certain other plantation and fugar-work, commonly called and known by the name of —, fituated in the parifh of —, in the faid ifland of —, for fuch term of years, and to

A G R E E M E N T S.

be sold, and disposed of, at the port of Glasgow aforesaid, for such purposes as are herein after mentioned. NOW THIS INDENTURE WITNESSETH, That, in consideration of the premises, he the said B, for himself, his heirs, executors, administrators, and assigns, Doth hereby covenant, promise, and agree, to and with the said A, his heirs, executors, administrators, and assigns, in manner following, that is to say, That if the said A, his heirs, or assigns, do and shall, well and truly ship, and consign, or cause to be shipped and consigned, unto him the said B, his executors, administrators, or assigns, for sale, at the port of Glasgow, as aforesaid, the whole of the sugars to be made upon the said two several mortgaged plantations, and also upon the said undivided moiety, or equal half part of the said other plantation, called ———, for the crops in the respective years ———, and ———, and thereafter, until the whole of the monies, so as aforesaid secured and made payable to the said B, his executors, administrators, or assigns, under and in virtue of the said herein recited indenture of release, shall be fully paid and satisfied, the neat proceeds thereof to be applied and disposed of in the manner herein after mentioned; Then, and in such case, he the said B, his heirs, executors, administrators, and assigns, shall be contented and satisfied to accept, receive, and take payment, and satisfaction of the said several and respective sums of money, payable and secured, in manner as aforesaid, in the manner herein after mentioned; and shall not, nor will he, his heirs, executors, administrators, or assigns, adopt, take, or pursue, any measures whatsoever, judicial or otherwise, upon the aforesaid indenture of release, by the way of mortgage, and the said bond, or either of them, against or to affect the said A, his heirs, executors, or administrators, or any of them, or his lands or tenements, goods or chattels, or the said mortgaged premises, or any part thereof, or for, or by reason, or means of any covenant, article, clause, matter, or thing, in the said recited indenture of release, and bond, or either of them contained, any thing therein or herein before contained to the contrary thereof in any wise notwithstanding: AND the said A, for himself, his heirs, executors, and administrators, Doth hereby covenant, promise, and agree, to and with the said B, his executors, administrators, and assigns, in manner following; That is to say, that he the said A, his heirs, or assigns, shall and will, well and truly ship and consign, or cause to be shipped and consigned, unto him the said B, his executors, administrators, or assigns, the whole of the sugars, to be made

upon the said two several mortgaged plantations respectively, called ———, and ———, and also upon the said undivided moiety or half part of him the said A, of and in the said other plantation and sugar-work, called ———, for the crops of the said respective years, ———, and ———, and afterwards, until the whole of the monies, so as aforesaid secured, and made payable to the said B, with all interest thereon, shall be fully and completely paid and satisfied as aforesaid, to be sold and disposed of, by him the said B, his executors, administrators, or assigns, at Glasgow, and the neat proceeds thereof, to be, from time to time, applied in manner herein after mentioned; that is to say, (after deducting duties, freight, insurance, factorage, commissions, and all other incidental charges and expences, attending such produce, and also the amount of the annual supplies of the said plantations, which may have been sent out by the said B, for the year preceding,) In the first place, in payment and satisfaction of the aforesaid principal sum of five thousand pounds, and interest thereon, at the rate aforesaid; And in the next place, in payment and satisfaction of all and every such farther and other sum, or sums of money, as shall have been advanced, lent, or paid by the said B, his executors, administrators, or assigns, in manner aforesaid, or on any account whatsoever, unto the said A, and shall be then remaining justly due from him, and the interest thereon, at the rate aforesaid; And the remainder of such neat proceeds, to pay over the same unto the said A, his heirs, executors, administrators, or assigns, as he or they shall, from time to time, order or direct.

AND it is hereby farther covenanted, declared, and agreed upon, by and between the said parties, to these presents, That in case he the said B, his executors, administrators, or assigns, shall have good, staunch, and sufficient ships or vessels, at the respective ports of ———, and ———, in the said island of ———, bound for the said port of Glasgow, from time to time, as it shall be convenient for the said A, his heirs, and assigns, for shipping the said sugars, from the said respective ports, He the said A, his heirs and assigns, shall and will, ship all such sugars, or so much, and such part thereof, as can be conveniently received, or taken on board of such last mentioned ships or vessels, in preference to any other ship or ships, vessel or vessels; And in case it shall at any time happen, that he the said B, his executors or administrators, shall not have any ship or vessel, at the aforesaid ports of ———, and ———, wherein the said sugars can be shipped and received, for the said port of

Glasgow, THEN, and in that case, and so often as such event shall happen, the said A, his heirs or assigns, shall and will ship, and consign such sugars, or such part thereof, as shall not have been shipped on board the ships or vessels of the said B, on board of such other ship or ships, vessel or vessels, as can receive the same for the said port of Glasgow, consigned to the said B, in the manner and for the purposes aforesaid: AND it is hereby farther declared and agreed, by and between the parties aforesaid, to these presents, and the said A, for himself, his heirs, executors, and administrators, doth accordingly farther covenant and agree, to and with the said B, his heirs, executors, administrators, and assigns, that in case default shall happen to be made, of, or in the shipping and consigning the whole sugars herein before mentioned, or any part thereof, contrary to the aforesaid covenants and agreements, of him the said A, and the true intent and meaning of these presents; Then, and in such event, it shall and may be lawful to and for the said B, his heirs, executors, administrators, or assigns, at any time, or times, after such default, to proceed upon the aforesaid indentures of lease and release, by way of mortgage, and the said bond, or obligation, respectively, or upon either of them, either at law, or in equity, and to take and pursue all such legal and proper methods, as they shall be advised, or think eligible, for the recovery of the whole money, so secured and made payable, under and in virtue of the said mortgage, as if these presents had never been entered into or executed, any thing herein contained, to the contrary thereof, in any wise notwithstanding: AND, lastly, it is hereby farther declared and agreed upon, and between the parties aforesaid, to these presents, That he the said B, his executors, administrators, or assigns, shall, from time to time, faithfully make out, and deliver, or cause to be made out, and delivered, unto the said A, his heirs, executors, administrators, or assigns, true and just accounts of sales, of all such sugars, as shall be so shipped and consigned to him, or them, in manner, and for the purposes aforesaid, and also, a true and just account current, in the premises, on or before the — day of —, in each and every year; which said account current, being duly examined and approved of, shall be signed and acknowledged accordingly, by the said parties. IN WITNESS whereof, the parties aforesaid, to these presents, their hands and seals have hereunto set, the day and year first above written.

Sealed and delivered, &c.

*Agreement between a Merchant or Trader in Scotland, and No. IX.
a Factor or Agent in England.*

Articles of Agreement, indented, &c. between A of the city of —, in Scotland, and B of the city of —, in England.

WHEREAS the said A hath contracted and agreed with the said B, for the vending, selling, and uttering, in the said city of —, in England, of all such wares and merchandise, as he, the said A, shall send and consign unto the said B, for and during the term of — years, to commence from the day of the date of these presents: WHEREUPON they, the said A and B, for themselves, their executors, and administrators, do mutually and reciprocally covenant, and grant, to and with each other, and each of their executors and administrators, in manner following.

FIRST of all, That he, the said B, shall and will accept, and take into his trust, charge, and custody, all such wares and merchandise, as he, the said A, shall send, or consign, unto him, the said B; And shall also exert his best endeavours, to vend and sell the same, for the profit and advantage of the said A, for and during the aforesaid term of — years, to commence from the day of the date of these presents, as aforesaid.

ALSO, That he, the said B, shall keep, or cause to be kept, just, true and regular books of account, in writing, of all such wares and merchandise, as the said A shall, from time to time, during the aforesaid term, send and consign unto the said B, and shall come into his charge and custody; That is to say, when, to whom, and at what prices, the said wares and merchandise, shall be sold by the said B; and shall also pay, or cause to be paid, and delivered unto the said A, his executors, administrators, or assigns, all such monies, specialties, and other things, as shall come to the hands of, and be received by the said B, for the said wares and merchandise, during the term aforesaid; and all such wares and merchandise, as shall remain unsold, in the custody of the said B, at the expiration of the said term.

ALSO, That he, the said B, shall be true and faithful unto the said A, in the sale and disposal of the wares and merchandise of the said A, during the aforesaid term, and shall not defraud the said A,

E

in the premises; but shall endeavour to vend and sell the said goods or merchandise, for the best prices, and at the shortest credit he possibly can.

AND the said A, for and in consideration of the said factorship, doth covenant and agree, for himself, his executors, and administrators, to pay unto the said B, his executors, or administrators, the sum of — pounds sterling, yearly, and every year, during the aforesaid term. IN WITNESS WHEREOF, &c.

No. X.

For a Clerk, or Book-keeper, to go abroad.

* *Articles of Agreement, indented, &c. between A of —, of the one part, and B of —, of the other part, as follows, (that is to say,)*

THE said B, for the consideration herein after mentioned, DOTH covenant, promise, and agree, to and with the said A, That he, the said B, shall and will, when required by the said A, go on board, and sail in, and with, such ship or vessel, as shall, in that behalf, be provided by the said A, for the town of —, in the province of —, in North America; and, immediately upon his arrival there, shall enter into the service of C, of the said town of —, factor, or storekeeper, for the said A, and shall continue therein, for and during the term of — years, to be accounted from his arrival at the said town of — aforesaid: And shall, and will, diligently, and faithfully, employ himself in, and do and perform all such business and services, in keeping the books, and accounts of the said C, or otherwise, relating to the business and occupation of a merchant, as he, the said C, shall, from time to time, order and direct: AND that he, the said A, shall and will, from time to time, render a just and true account, and discharge himself of, for, and from, all

* See No. 13.

monies, goods, bills, accounts, and things whatsoever, which shall come under his charge, care, or disposal, during the aforesaid term of ——— years, in any wise belonging to the said C; and that he shall keep the secrets of the said C, in and relating to his said trade and business. IN CONSIDERATION of which services, to be performed by the said B, as aforesaid, The said A doth, for himself, his executors, and administrators, covenant, promise, and agree, to and with the said B, his executors, administrators, and assigns, That he, the said C, his executors, or assigns, shall and will, well and truly pay, or cause to be paid, unto the said B, at the town of ——— aforesaid, the sum of ———, of lawful money of Great Britain, for the first year of the said term of ——— years; The sum of ———, of like money, for the second year, (*and so on,*) and that by equal quarterly payments, during the said ——— years respectively: AND shall also, at his own charges, procure and provide, unto the said B, meat, drink, washing, and lodging, suitable to his rank and condition, during the aforesaid term; and shall likewise defray and pay the charges of his passage to the town of ——— aforesaid; AND for the true performance of all, and every the covenants aforesaid, each of the said parties bindeth himself, his heirs, executors, and administrators, unto the other of them, his heirs, executors, and administrators, in the penal sum of ———. IN WITNESS, &c.

For a Tradesman to go abroad, and exercise his trade there. No. XI.

* *Agreed the ——— day of ———, between A of ———, of the one part, and B of ———, of the other part.*

THE said A, doth covenant and agree, to and with the said B, his executors, administrators, and assigns, That he, the said A, upon the first notice given to him, by the said B, after the date hereof, shall and will, go on board such ship or vessel, as he, the said B, shall order

* See No. 14.

and direct, and sail in, and with the said ship or vessel, to the island of ———, in the West Indies; and upon his arrival there, that he shall and will, enter into, and for the space of ——— years, to be accounted from and after his arrival at the said island of ———, continue in the service of the said B, or of any other person or persons, in the said island of ———, he shall appoint; AND shall and will, employ himself in, and perform the art and business of ———. And the said B, for himself, his executors and administrators, doth hereby covenant and agree, to and with the said A, That if he, the said A, shall go on board, and sail in, and with, such ship or vessel, as he the said B shall order and direct, for the island of ——— aforesaid; and upon his arrival there, shall enter into, and continue in the service of the said B, or of any other person or persons, in the said island, he shall appoint, and continue therein, and perform the aforesaid art and business, for the term before mentioned, That he, the said B, his executors, administrators, or assigns, shall and will pay, or cause to be paid, unto the said A, during the aforesaid term of ———, to be accounted as aforesaid, or for so long time thereof, as he shall continue in the said service, the sum of ———, of lawful money, of Great Britain, per month; The first payment whereof to be made at the end of one month from the arrival of the said A, in the said island of ———, and entry to the service of the said B as aforesaid; And for the true performance, &c. IN WITNESS, &c.

No. XII.

Indenture of Apprenticeship, to a Merchant abroad.

THIS INDENTURE, made the ——— day of ———, in the year of our Lord ———, between A, of the city of ———, in ———, and B, one of the sons of the said A, of the one part; and C, of the said city of ———, Merchant, of the other part, WITNESSETH; That the said B, of his own free will and accord, and by, and with the consent and approbation of the said A, his father, testified by his sealing and delivering these presents, DOTH hereby bind himself unto the said C, after the manner of an apprentice, to serve and follow the said C, in a certain partnership concern, between him,

the said C, and D of the town of ———, in ———, for the term of ——— years, to be accounted from his arrival at the said town of ———; and to do and perform, all such services, as he shall be required and appointed by the said D, about the affairs and business of the said C and D. DURING which period, the said B, shall faithfully, and diligently serve, and be just and true to the said C and D his partner, and shall carefully observe and perform their orders and instructions, relating to their affairs and business, to the utmost of his power, for their profit and advantage. He shall not do, nor willingly suffer to be done by others, any hurt or damage to the said D, or to the goods, estate, and affairs of him the said D, and C, his partner; but the same, to the utmost of his power, shall hinder, and the said D thereof shall forthwith warn. And shall and will likewise discover, and make known, to the said D, any designs, which shall come to his knowledge, tending to the damage or disadvantage of the said D and C his partner. He shall not absent himself from his said service, day or night, unlawfully; but, in all things, as a good and faithful apprentice, shall and will demean, and behave himself to the said C and D, during the aforesaid term of ———: AND FOR AND IN CONSIDERATION whereof, the said C, doth for himself, and for the said D, his said partner, covenant, promise, and agree, to teach and instruct the said B, or cause him to be well, and sufficiently instructed, in the business aforesaid of a Merchant, practised and used by them, the said C and D, at ——— aforesaid. And shall and will procure, provide, and allow, unto the said B, meat, drink, washing, lodging, and apparel, and all other necessaries, in sickness, and in health, suitable and convenient for such an apprentice, during the term aforesaid. IN WITNESS, &c.

No. XIII.

*Indenture of Covenants: or, Agreement by Indenture,
for a Book-keeper to serve abroad; with liberty to leave
his service, if he has not his health.*

THIS INDENTURE, made, &c. between A of ———, of the one part, and B of ———, of the other part, WITNESSETH; That the said A, for the consideration herein after mentioned, DOTH covenant, &c. to and with the said B, that he, the said A, shall and will, immediately after the day of the date hereof, enter on board such ship or vessel, as the said B, or his assigns, shall appoint for his passage, to the island of ———, and sail therein, and therewith, to the said island of ———; and for and during the term of ——— years, to commence and be accounted from his arrival there, that he shall and will dwell, serve, and continue, with C, of the parish of ———, in the said island of ———, factor, or agent, or other the factors, agents, or assigns, of the said B, and employ himself in keeping the accounts of the plantations of the said B, in the said island, and shall perform such other service relating to the affairs and business of the said B, in the said island, as the said C, or other the factors, or assigns, of the said B, shall order and direct. AND that he, the said A, shall and will, during the aforesaid term, be just and faithful to the said B, and shall, from time to time, render a true and just account, and acquit and discharge himself, of, and from all monies, goods, wares, and merchandise, which he shall receive, or which shall be committed to his charge, during the aforesaid term.

IN CONSIDERATION whereof, and of the services to be performed by the said A, as aforesaid, the said B, for himself, his executors, factors, or assigns, DOTH hereby covenant, promise, and agree, to and with the said A, that the said C, or other the factor, agents, or assigns, of the said B, at the island of ———, aforesaid, shall truly pay, or cause to be paid, unto the said A, in the said island of ———, during the said term of ——— years, the sum or salary of ——— pounds, of lawful money of Great Britain, per annum, by equal quarterly payments: The first payment, &c. AND shall also, at his own charges, procure, and provide, unto

the said A, good and sufficient meat, &c. &c. AND IT IS COVENANTED AND AGREED, between the said parties, That if the said A shall, at any time during the aforesaid term, become unable, by indisposition, to attend the service of the said B, with the said C, or other the factor, or assigns of the said B, in the said island of ———, as aforesaid, and shall be desirous to return to Britain; and for that purpose shall give ——— months notice in writing, to the said C, or other the factors, agents, or assigns of the said B, in the island of ———, aforesaid; that then, and in such case, from and after the end of ——— months notice, so to be given as aforesaid, and a just and faithful account, payment, and delivery, rendered, made and given to the said C, or other the factors, agents, or assigns of the said A, at the island of ———, aforesaid, of all monies, goods, wares, and merchandise, of, or belonging to him, the said A, or the said C, or other, &c. or any of them, which shall be in his hands, or with which he shall be chargeable, it shall and may be lawful, to and for the said A, to leave the aforesaid service, (which shall from thenceforth cease and determine,) and return to Britain; these presents, or any covenant, or agreement, therein to the contrary contained, in any wise notwithstanding. IN WITNESS, &c.

Another. For a Workman, &c.

No. XIV.

THIS INDENTURE, made, &c. between A of ———, of the one part, and B of ———, of the other part, WITNESSETH; That the said A, doth, &c. (*as in the preceding Indenture,*) and for and during the term of ——— years, to commence and be computed from his arrival in the said island of ———, shall and will, at all times, constantly, faithfully, and honestly, and according to the best of his judgment, understanding, and ability, exercise himself in the work and occupation of a ———, and such other work and services as he shall be capable to do and perform, according to the orders and directions of the said B, or his assigns; IN CONSIDERATION WHEREOF, and of the services to be performed as afore-

A G R E E M E N T S.

faid, the faid B, for himself, his &c. doth hereby covenant, &c. to and with the faid A, that he, the faid B, or his assigns, shall and will, at his or their charges, pay for the passage of the faid A, to the faid island of ———, and there provide, procure, and allow him, meat, drink, lodging, working-tools, and utensils, and all other necessaries, (apparel excepted,) during the faid term; AND shall and will also, pay unto the faid A, in current money of the faid island, for the first year of the aforefaid term of ——— years, the sum of ———; and for, &c. by quarterly payments, and by equal portions; and for the true performance of all and every the covenants aforefaid, each of the faid parties bindeth himself, &c. IN WITNESS, &c.

APPOINTMENTS.

An Appointment of a Guardian.

No. I.

KNOW all men by these presents, That I, A, of the city of Glasgow, in Scotland, an infant,* of the age of eighteen years and upwards, eldest son and heir of B, of the county of ———, Esquire, deceased, by C, his wife, HAVE elected, nominated, and appointed, and, by these presents, DO elect, nominate, and appoint, my uncle, D, of ———, to be guardian of my person and estate, until I shall attain the age of twenty and one years. WITNESS my hand and seal, this ——— day of ———, in the year ———.

A.



Sealed and delivered, in }
the presence of } E.
 F.

Another, with Power to the Guardian to let Lands, &c.

No. II.

KNOW all men by these presents, That I, A, son and heir of B, late of ———, deceased, being about the age of sixteen years, HAVE nominated, elected, and chosen, and, by these presents, DO nominate, elect, and chuse, C, of ———, to be guardian of my person and estate, until I shall attain the age of twenty and one years; AND I hereby promise to be ruled and governed by

* Every person under the age of 21 years, is, by the law of England, an Infant. At fourteen an Infant is at years of legal discretion, and may chuse a Guardian.

A P P O I N T M E N T S.

him, in all things touching my welfare: AND I hereby also authorize, and empower the said C, to enter upon, and take possession of all and every my messuages, lands, tenements, hereditaments, and premises whatsoever, situated, lying, and being in ———, in the county of ——— or elsewhere, whereunto I have, or may have, any right or title; and to let and sell the same, and receive, and take the rents, issues, and profits thereof, for my use and benefit, during the term aforesaid: giving unto the said C, my full power in the premises, and whatsoever he shall lawfully do, or cause to be done, in the said premises, by virtue hereof, I do hereby promise to confirm the same. IN WITNESS, &c.

A S S I G N M E N T S.

* *Assignment of a Mortgage in Fee, by the Mortgagee, and a Confirmation by the Mortgager, in consideration of a farther Sum lent by the Assignee, or second Mortgagee.* No. 1.

(By Endorsement on the Release.)

WHEREAS the within named A, hath not paid to the within named B, the sum of ———, secured by the within recited indentures of lease and release, on the lands and premises within-mentioned, whereby the estate and interest of the said B, of, and in, the same premises, is become absolute in law; AND WHEREAS, the said B, having occasion for his said money, secured on the said premises, and C of ———, hath, at the desire and request of the said A, agreed to advance and pay, to the said B, the aforesaid principal sum of ———, and the sum of ———, due on the date hereof, for the interest of the same, and to accept and take an assignment, of the said mortgage, and of all the estate, right, title, interest and inheritance, of him the said B, of, and in, the same lands and premises, and of the within recited indentures of lease and release; and hath also agreed, to advance and lend unto the said A, on a security of the same premises, the farther sum of ———, making together the

Recital.

* Mortgages in Fee are sometimes transferred by Assignment. But as a Mortgagee in Fee, acquires an estate of inheritance in the mortgaged premises, Mortgages in Fee are more properly transferred by Lease and Release. See Lease and Release No. 5. and observations, on the several species of English Deeds, Sec. 22.

Consideration sum of ———; NOW KNOW ALL MEN BY THESE PRESENTS, That the said B, for, and in consideration of, the sum of ———, to him in hand well and truly paid, by the said C, at, or immediately before, the sealing and delivery of these presents, the receipt whereof the said B doth hereby acknowledge, hath, by the consent, direction, and appointment, of the said A, testified by his being a party to and executing these presents, bargained, sold, assigned, transferred, and set over, and by these presents doth bargain, sell, assign, transfer and set over, and the said A doth hereby ratify, assure and confirm, unto the said C, his executors, administrators, and assigns, all and singular (*the mortgaged premises,*) and all the estate, right, title, inheritance, interest, claim and demand whatsoever, of him, the said B, and the reversion and reversions, remainder and remainders, rents, issues and profits, of all and singular the said premises, to him granted and released; and also, the within recited indentures of lease and release, and all other deeds and writings, relating to the said premises, in his custody, or possession, or which he can come by, without suit in law, or in equity: TO HAVE AND TO HOLD the said (*mortgaged premises,*) unto the said C, his heirs and assigns for ever, to the only proper use and behoof of the said C, his heirs and assigns for ever; SUBJECT NEVERTHELESS, to the proviso, or condition, within and herein after contained, for making void the same: AND the said B, for himself, his executors, administrators, and assigns, Doth covenant, promise and agree, to, and with, the said C, his executors, administrators, and assigns, that he, the said B, hath not, at any time or times heretofore, made, done, committed, or suffered, any act, matter, deed, or thing whatsoever, whereby, or by means whereof, the said recited indenture of mortgage, and premises thereby granted and released, or any part thereof, is, are, or shall, or may be, anywise impeached, or encumbered, in title, charge, estate, or otherwise howsoever: AND the said A, for, and in consideration of, the farther sum of ———, to him advanced, lent, and in hand paid by the said C, at, or immediately before, the sealing and delivery of these presents, the receipt whereof he doth hereby acknowledge, and thereof, and of every part and parcel thereof, doth freely, clearly, and absolutely, acquit, exonerate and discharge, the said C, his executors, administrators, and assigns, by these presents, HATH granted, bargained, sold, released, ratified and confirmed, and by these presents, doth grant, bargain, sell, release, ratify and con-

Habendum in
 sec.

Subject to the
 proviso for re-
 demption.

Covenant that
 the assigner
 has done no
 act to encum-
 ber.

Farther con-
 sideration.

firm, unto the said C, his heirs, executors, administrators, and assigns, ALL and singular the said within-mentioned (*here again recite the mortgaged premises,*) and premises, to hold unto the said C, his heirs and assigns, to the use, and behoof, of the said C, his heirs and assigns for ever: and the said A, for himself, his heirs and assigns, doth covenant, promise, grant, and agree, to, and with, the said C, his heirs, executors, administrators, and assigns, by these presents, That all and singular the said lands, hereditaments, and premises, mentioned and comprised, in the within recited indentures of lease and release, shall, from henceforth, stand, remain, and be charged and chargeable with, and be a security to the said C, his executors, administrators, and assigns, as well for the payment of the said sum of ———, so by him paid to the said B, as for the said sum of ———, now advanced, lent, and paid to the said A, with lawful interest for the same, and shall not be redeemed, or redeemable, until, as well the said sum of ———, as also, the said sum of ———, making together the sum of ———, and lawful interest for the same, shall be fully paid and satisfied, unto the said C, his executors, administrators, or assigns; AND the said A, for himself, his heirs, executors, and administrators, doth covenant, promise, grant and agree, to and with the said C, his executors, administrators, and assigns, by these presents, that he, the said A, his heirs, executors, administrators, and assigns, shall and will, well and truly pay, or cause to be paid, unto the said C, his executors, administrators, or assigns, the said sum of ———, secured, or intended to be hereby secured, on the said premises, with lawful interest for the same, on the ——— day of ——— next ensuing, without any deduction, or abatement whatsoever; AND also, that he, the said A, hath not, at any time or times heretofore, made, done, committed or suffered, any act, matter, deed, or thing whatsoever, except the within recited indentures of lease and release, whereby, or by means whereof, the said premises within granted and released, is, are, shall, or may be impeached, charged, or encumbered, in title, charge, estate, or otherwise howsoever: PROVIDED ALWAYS, and these presents are upon this condition nevertheless, That if the said A, his heirs or assigns, shall and do, well and truly pay, or cause to be paid, unto the said C, his executors, administrators, or assigns, the said sum of ———, with lawful interest for the same, on the ——— day of ———, next ensuing the date hereof, without any deduction, or abatement whatsoever, for, or on account of, any taxes or other-

Covenant that the premises shall remain as a security for both sums.

Covenant for payment of the money.

That the owner hath done no act to encumber.

Proviso to be void on payment.

A S S I G N M E N T S.

wife, then the within recited indentures of lease and release, and these presents, shall be, from thenceforth, void and of no effect, any thing therein and herein contained to the contrary, in any wise notwithstanding. IN WITNESS whereof, the said parties to these presents, have hereunto, severally, set their hands and seals, the — day of —, in the year of our Lord —.

A.



Signed, sealed, and delivered,
(being first duly stamped,) }
in the presence of D.
E.

B.



C.



No. II.

An Assignment of a Mortgage, by Demise.

THIS INDENTURE, made the — day of —, in the year of our Lord —, between A of —, Esquire, of the one part, and B of —, Merchant, of the other part.
Recital. WHEREAS, by indenture of demise, by way of mortgage, made, or mentioned to be made, between C of —, Gentleman, of the one part, and the said B of the other part, IT IS WITNESSED, That the said C, for and in consideration of the sum of —, to him in hand paid by the said B, DEMISED, granted, and to farm-let, unto the said B, his executors, administrators, and assigns, ALL that (*here describe the premises,*) then in the tenure or occupation of —, his undertenants, or assigns, TO hold, all and singular the said —, thereby demised, or meant, mentioned, or intended so to be, with their, and every of their appurtenances, unto the said B, his executors, administrators, and assigns, from the day of the date thereof, unto the full end, and term, of one thousand years next ensuing, and fully to be completed and ended, at, and under,

the yearly rent of a pepper-corn; SUBJECT NEVERTHELESS, to a proviso, or condition, in the said indenture contained, for making void the same, on payment by the said C, his heirs, executors, or administrators, to the said B, his executors, administrators, or assigns, of the sum of ———, of lawful money of Great Britain, on a certain day therein mentioned, and long since past, without any deduction, or abatement, on any account or pretence whatsoever; which said money was not paid according to the said proviso, or condition, but still remains due and owing unto the said B.

NOW THIS INDENTURE WITNESSETH, That for, and in consideration of, the sum of ———, to the said B, in hand, well and truly paid by the said A, at, or immediately before, the sealing and delivering these presents, the receipt whereof, &c. (*as in the preceding assignment,*) HE, the said B, hath bargained, sold, assigned, transferred, and set over, and by these presents doth bargain, sell, assign, transfer, and set over, unto the said A, his executors, administrators, and assigns, ALL that, the before-mentioned; ———, which, in and by the said recited indenture of mortgage, were by him, the said C, demised and granted unto the said B, with their and every of their appurtenances; AND the reversion and reversions, remainder and remainders thereof; and all the estate, right, title, interest, property, claim or demand whatsoever; of him, the said B, of, in, and to the same, by virtue of the said recited indenture of demise, by way of mortgage, or otherwise howsoever; together with the same indenture, and all, and every, the deeds, writings, and evidences, touching and concerning the said premises, which he, the said B, hath in his hands or custody, or can come by, without suit in law or equity; TO HAVE and to HOLD the said (*mortgaged premises,*) and all Confideration-
Habendum- and singular other the premises, herein before-mentioned, and intended to be hereby assigned, with their, and every of their rights, members, and appurtenances, unto the said A, his executors, administrators, and assigns, from henceforth, for, and during, all the rest, residue and remainder, of the before-mentioned term of one thousand years, now to come and unexpired; SUBJECT NEVERTHELESS, Proviso for redemption. to such right and equity of redemption, as the said C, his heirs and assigns, and such other person or persons, to whom the free-hold and inheritance, of the said premises, now, or at any time hereafter shall, lawfully belong, or appertain, may have therein, on payment of the aforesaid principal sum, interest, and all costs and charges due, or to become due, thereon: AND the said B, for himself, his

That the assigner hath done no act to encumber. executors, administrators, and assigns, doth covenant, promise and agree, to and with the said A, his executors, administrators, and assigns, that he, the said B, hath not, at any time or times heretofore, made, done, committed, or suffered, any act, matter, deed, or thing whatsoever, whereby, or by means whereof, the said recited indenture of demise by way of mortgage, and the premises, thereby granted and demised, or any part thereof, is, are, or shall or may be, any wise impeached, or encumbered, in title, charge, estate, or otherwise howsoever. IN WITNESS, &c.

No. III. *Another, and a Bond for payment of the Mortgage-money, and performance of Covenants.*

(By Endorsement.)

KNOW ALL MEN BY THESE PRESENTS, That I, the within-named A, in consideration of ———, of lawful money of Great Britain, to me in hand paid, by B of ———, the receipt whereof, &c. (*as in the preceding assignments,*) have bargained, &c. and by these presents do bargain, &c. unto the said B, his executors, administrators, and assigns, ALL the within indenture of demise, and premises thereby granted and demised, or mentioned or intended so to be, and every part and parcel thereof, with the appurtenances; and all my estate, right, title, interest, term of years to come, property, claim and demand whatsoever, either in law, or in equity, of, in, or to, the same, or any part or parcel thereof: AND ALSO, one bond or obligation, bearing equal date with the within indenture, whereby, the within-named C, became bound to me, in the penal sum of ———, conditioned for the payment of ———, within-mentioned, and for performance of the several covenants in the within indenture contained; TO HAVE AND TO HOLD, the said ———, and premises, by the within indenture granted and demised, with their appurtenances, unto the said B, his executors, administrators, and assigns, from henceforth, for, and during, the

residue and remainder, now to come and unexpired, of the within term of ——— years, SUBJECT to the proviso within-contained; and to have, receive and take, all, and every, sum and sums of money, due, or to grow due, upon the said bond, to the said B, his executors, administrators, and assigns, to his and their own proper use, and behoof; and I, the said A, do hereby make, nominate and appoint, the said B, his executors, administrators, and assigns, my true and lawful, attorney and attornies, &c. (*as in the letter of attorney in the assignment of bonds, see assignments, No. 11.*) And I, the said A, do hereby, for myself, my heirs, executors, and administrators, covenant, &c. (*that the premises are not encumbered, &c. as in the preceding assignment.*) IN WITNESS whereof, &c.

Covenant that
the assigner
hath done no
act to encum-
ber.

Assignment of a mortgaged term, in Trust, to attend the Inheritance. No. IV.

THIS INDENTURE, tripartite, made the ——— day of ———, in the year of our Lord ———, between A of ———, (*the mortgagee,*) of the first part, B of ———, (*the mortgager,*) of the second part, and C of ———, (*the intended purchaser of the freehold,*) D of ———, and E of ———, (*the trustees,*) of the third part. WHEREAS, the said B, by indenture, bearing date the ——— day of ———, did, for the considerations therein-mentioned, demise, lease, &c. (*as in the lease,*) ALL that messuage, &c. situated, &c. (*as in the lease,*) to hold to the said A, his executors, administrators, and assigns, from the day of the date thereof, for, and during, the term of one thousand years from thenceforth next ensuing, and fully to be completed and ended, at, and under, the yearly rent of one pepper-corn, if demanded: IN which said indenture of lease was contained, a proviso, or condition, for making the same void, upon payment of the sum of ———, of lawful money of Great Britain, with legal interest for the same, unto the said A, his executors, administrators, or assigns, by the said B, his executors or administrators, at a certain day therein-mentioned, and long since past;

Recital.

A S S I G N M E N T S.

as in and by the said in part recited indenture of lease, relation being thereunto had; may more fully appear: AND WHEREAS, default in payment of the said sum of ———, with interest for the same, hath been made by the said B, by means whereof the said premises above-mentioned, are become forfeited to the said A, and his estate and interest therein, during the residue and remainder of the said term of one thousand years, is become absolute in law: AND WHEREAS, upon account this day made up and stated between the said B and A, there appears to be due unto him, the said A, upon the aforesaid security of the said premises, the full sum of ———, for principal money and interest: AND WHEREAS, the said C, hath lately contracted with the said B, for the absolute purchase of the fee-simple and inheritance, of all and singular the said premises above-mentioned, with the appurtenances, for the sum of ———, of lawful money of Great Britain, and the said fee-simple and inheritance of the premises, are intended to be forthwith granted and conveyed, by the said B, unto the said C, his heirs and assigns: NOW, to the end the said term of one thousand years may be preserved and kept on foot, to attend and wait on the reversion and inheritance of the said premises, to protect and defend the same, from all encumbrances subsequent to the creation of the said recited term; THIS INDENTURE WITNESSETH, That the said A, for, and in consideration of, the aforesaid sum of ———, (*the money due to the mortgagee,*) to him in hand, well and truly paid by the said C, (by and with the direction and consent of the said B, testified by his being a party to, and sealing these presents,) the receipt whereof the said A doth hereby acknowledge; AND also, in consideration of five shillings, of like lawful money, to the said A, in hand paid by the said D and E, the receipt whereof he, the said A, doth hereby likewise acknowledge, HE, the said A, by and with the direction and consent of the said B, testified as aforesaid, HATH granted, bargained, sold, assigned, transferred, and set over, and by these presents, DOTH grant, bargain, sell, assign, transfer, and set over, unto the said D, and E, (by the nomination and appointment of the said C,) ALL and singular, (*mention the premises again,*) above-mentioned, and every part and parcel thereof, with the appurtenances; AND also, all the estate, right, title, interest, claim and demand whatsoever, of him, the said A, of, in, and to the same, and every part and parcel thereof, with the appurtenances: TO HAVE AND TO HOLD, the said ———, and premises above-mentioned,

Consideration

Habendum.

and every part and parcel thereof, with the appurtenances, unto the said D, and E, their executors, administrators, and assigns, for, and during, all the rest, residue and remainder, of the said term of one thousand years above-mentioned, yet to come and unexpired, IN TRUST for the said C, his heirs and assigns, and such other person and persons, to whom the freehold and inheritance of the premises shall appertain and belong, to protect and defend the same, from all subsequent encumbrances: AND the said A, for himself, his heirs, executors, and administrators, doth covenant and grant, to and with the said C, his executors, administrators, and assigns, That he, the said A, hath not committed, or done, any act, matter, or thing whatsoever, whereby, or wherewith, the said premises above-mentioned, or any part thereof, are, is, shall, or may be, impeached, or encumbered, in title, charge, estate, or otherwise howsoever. IN WITNESS, &c.

Covenant that the assigner hath done no act to encumber.

Another, to a Trustee to prevent a Merger, so as the Mortgagee may be enabled to purchase the Fee-simple, and Inheritance of the Mortgaged Premises.

No. V.

(By Endorsement.)

TO ALL TO WHOM THESE PRESENTS SHALL COME, the within A, sends greeting. WHEREAS, the within-named B, hath agreed to convey the reversion and inheritance of the messuages, &c. within-mentioned, (expectant on the determination of the within term of one thousand years,) unto, and to, the use of the said A, his heirs and assigns; NOW KNOW YE, That, in order, to prevent the said term from being merged or sunk in the inheritance; And also, for, and in consideration of, the sum of five shillings, of lawful money, &c. to the said A, &c. paid by C of ———, the receipt, &c. HE, the said A, hath bargained, &c. and by these presents doth bargain, &c. unto the said C, his executors, &c. the messuages, &c. in, and by, the within-written indenture, granted and demised, with

Consideration

Habendum.

their &c. TO HAVE AND TO HOLD the said messuages, &c. hereby assigned, with their, and every of their, appurtenances, unto the said C, his executors, &c. from henceforth, for, and during, all the rest, residue and remainder, of the within-mentioned term of one thousand years, yet to come and unexpired; IN TRUST NEVERTHELESS, for the said A, his heirs and assigns, to attend and wait upon the reversion and inheritance of the said premises, so agreed to be conveyed to him and them, as aforesaid. IN WITNESS, &c.

No. VI.

An Assignment to a Lease.

Recital.

THIS INDENTURE, made the — day of —, in the year of our Lord —, between A of —, of the one part, and B of —, of the other part. WHEREAS, C of —, by one indenture of lease, under his hand and seal, duly executed, bearing date the — day of —, for the considerations therein mentioned, did demise and to farm-let, unto the said A, ALL that —, To hold unto the said A, his executors, administrators, and assigns, by, and under, the yearly rent, and performing the several covenants and agreements, in the said lease contained and expressed, concerning the same, as in, and by, the said lease, relation thereunto being had, will more fully and at large appear:

Consideration

NOW THIS INDENTURE WITNESSETH, That the said A, for, and in consideration of —, to him in hand well and truly paid, by the said B, at, or immediately before, the sealing and delivery of these presents, the receipt whereof the said A, doth hereby acknowledge, and thereof doth fully acquit and discharge the said B, his executors, administrators, and assigns, Hath assigned, transferred, and set over, and by these presents doth assign, transfer, and set over, unto the said B, his executors, administrators, and assigns, ALL that —, and all the estate, right, title, interest, possession, term of years to come, claim and demand whatsoever, which he, the said A, now hath, or may, or ought, or should have, or claim, in, or to, the —, and premises, with the appurtenances aforesaid, by force,

and virtue of the said recited indenture of lease: TO HAVE and to HOLD, the said ———, and also the said recited indenture of lease, and all the estate, right, title, interest, and term of years, before, in and by these presents, assigned, transferred, and set over, unto the said B, his executors, administrators, and assigns, to his and their own proper use and behoof, during the residue of the said term, by the said indenture of lease granted, and yet to come and unexpired, in as large, ample, and beneficial, a manner, to all intents and purposes, as he, the said A, now hath, or might, should, or ought to have, and enjoy the same, by force and virtue of the said recited indenture of lease, or otherwise howsoever; UNDER, and SUBJECT to, the payment and performance of, the rents, dues, duties, services and covenants, mentioned in the said recited lease: AND the said A, for himself, his executors and administrators, doth covenant and agree, to and with the said B, his executors, administrators, and assigns, that, notwithstanding any act or thing by the said A, done to the contrary, the said recited indenture of lease, is a good, true, perfect and indefeasible, lease, in the law, at the time of the sealing and delivery of these presents, and shall so stand, remain, continue, and be, unto the said B, his executors, administrators, and assigns, for, and during, the remainder of the term of years thereby granted, under the rents and covenants therein-mentioned and contained: AND ALSO, that the said B, his executors, administrators, and assigns, paying the yearly rent, and performing the several covenants, conditions and agreements, in the above recited lease mentioned, shall, and may, peaceably and quietly, have, hold, occupy, possess, and enjoy, the said ———, for, and during, the residue of the said term, by the said indenture of lease granted, and yet to come and unexpired, without the let, suit, trouble, or interruption, of him, the said A, his executors or administrators, or of any other person or persons, lawfully claiming, or to claim, any right, or interest, in the premises, from, or under, him, them, or any of them. IN WITNESS, &c.

Habendum.

Covenant that the case is good.

Covenant for peaceable enjoyment.

No. VII.

*An Assignment of a Lease, by way of Mortgage.**

Proviso of redemption.

Covenant to pay money, according to the proviso of redemption.

THIS INDENTURE, made the — day of —, in the year of our Lord —, between A of —, of the one part, and B of —, of the other part. WHEREAS, &c. (*as in the preceding assignment, to the end of the habendum, then insert this proviso,*) PROVIDED always nevertheless, and these presents are upon this express condition, and the said B does hereby for himself, his executors, and administrators, covenant, promise, and agree, to and with the said A, his heirs, executors, and administrators, that if the said A, his heirs, executors, and administrators, or any of them, shall and do, well and truly pay, or cause to be paid, unto the said B, his executors, administrators, or assigns, the sum of —, of lawful money of Great Britain, and lawful interest for the same, on the — day of —, without any abatement for, or in respect of, any present or future taxes, or any other matter or thing whatsoever; THEN that the said B, his executors, administrators, or assigns, shall and will surrender, or assign, so much of the said term as shall be then unexpired, unto the said A, his executors, administrators, or assigns, or to such other person or persons, as he, his executors, or administrators, shall nominate and appoint; free and clear from all encumbrances, to be by the said B, his executors, administrators, or assigns, committed in the mean time: AND the said A, doth for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said B, his executors, administrators, and assigns, by these presents, That he, the said A, shall and will pay, or cause to be paid, unto the said B, the sum of —, with lawful interest for the same, at, and upon the said — day of —, and that without any deduction, or abatement, to be made there-from, pursuant to the proviso and condition above-mentioned, and the true intent and meaning of these presents IN WITNESS, &c.

* See Observations on Estates upon Condition, Sec. 11.

An Assignment of a Lease, by way of Endorsement.

No. VIII.

BE IT REMEMBERED, That I, the within A, for, and towards satisfaction of, the sum of ———, by me due and owing unto B of ———, and for, and in consideration of, the sum of five shillings, to me in hand paid, at, or before, the sealing and delivery of these presents, the receipt whereof I do hereby acknowledge, have, for me, my executors and administrators, assigned and set over, and by these presents, do assign and set over, unto the said B, his executors, administrators, and assigns, as well the within-written indenture, as all the messuages, tenements, hereditaments, and premises, within-mentioned to be demised to me; and likewise, all my estate, right, title, interest, claim, property, and demand, of, in, or to, the same, which I now have, or hereafter may have, or claim, of, in, or to, the same, either by force, virtue, or means of the within-written indenture, or otherwise howsoever; **SUBJECT** nevertheless, to the rents and covenants, in the said within-written indenture contained. **WITNESS** my hand and seal, this ——— day of ———, in the year of our Lord ———.

Assignment of a Ship.

No. IX.

KNOW ALL MEN BY THESE PRESENTS, That I, A, of the city of ———, Merchant, for, and in consideration of, the sum of ———, of lawful money of Great Britain, to me in hand paid, by B of ———, Merchant, at, or immediately before the sealing and delivery of these presents, the receipt whereof I do hereby acknowledge, and thereof, and of every part and parcel thereof, do fully, clearly, and absolutely, acquit, release, and discharge the said B, his heirs, executors, administrators, and assigns, and every of them, for ever by these presents; **HAVE** granted, bargained,

Consideration

Habendum.

Covenant that
the assigner
hath power to
sell.

That the pre-
mises are free
from encum-
brances.

fold, assigned, transferred, and set over, and by these presents do fully, clearly, and absolutely, grant, bargain, sell, assign, transfer, and set over, unto the said B, his executors, administrators, and assigns for ever, The good ship or vessel, called the ———, British-built, of the burthen of ——— tons, or thereabouts, now lying at anchor in the harbour of ———; together, with all and singular the anchors, cables, ropes, masts, sails, sail-yards, boat-oars, small-arms, ammunition, provision, tackle, apparel, and furniture whatsoever, to the said ship or vessel belonging, or in any wise appertaining; TO HAVE AND TO HOLD the said ship or vessel, and all and singular other the above-bargained premises, with their appurtenances, and every part and parcel thereof, unto the said B, his executors, administrators, and assigns, to their own proper use, and uses, and as their own proper goods and chattels, from henceforth freely, and for ever more: AND I, the said A, Do hereby for myself, my executors, and administrators, covenant, promise, and agree, to and with the said B, his executors, administrators, and assigns, that I have in myself, full power and lawful authority, to grant, bargain, and sell, the said ship or vessel, and all other the above-bargained premises, unto the said B, his executors, administrators, and assigns, in manner aforesaid; And that the said ship or vessel, and all other the above-bargained premises, now are, and so from henceforth shall be, remain and continue, unto the said B, his executors, administrators, and assigns, free and clear, and freely and clearly acquitted, exonerated and discharged, of, and from, all, and all manner of, former and other bargains, sales, gifts, grants, titles, debts, charges and encumbrances whatsoever. IN WITNESS whereof, &c.

An Assignment of a Debt, for securing Payment of a Debt.* No. X.

KNOW ALL MEN BY THESE PRESENTS, That I, A, of ———, in consideration of the sum of ———, now justly due Consideration and owing by me, to B of ———, and for better securing payment of the same to the said B, HAVE bargained, sold, assigned, and transferred, AND by these presents DO bargain, sell, assign, and transfer, unto the said B, ALL that debt or sum of ———, which is now due and owing unto me by C of ———, for goods sold and delivered by me to the said C, or his order, before the day of the date hereof; and all my right, title, interest, claim and demand, of, in, or to, the said debt or sum of ———, or any part thereof; TO HOLD to the said B, his executors, administrators, and assigns, from henceforth, to his and their own proper use and behoof for ever, under the proviso and condition herein after-mentioned: AND I do hereby constitute and appoint the said B, to be my true and lawful Letter of attorney. attorney irrevocable; and do give and grant unto him, his executors and administrators, full power and authority, in my name, and in the name of my executors or administrators, but to the only proper use of the said B, his executors and administrators, To ask, demand, sue for, levy, recover, receive, compound, acquit, release, and discharge, the said debt or sum of ———, and every, or any part thereof; AND upon receipt of the same, or any part thereof, acquittances, or other proper discharges, to make and give, and generally, for me, and in my name, or in the name of my executors or administrators, to make, do, perform, and execute, all, and every such farther and other, acts, matters, and things, touching and concerning the premises, as to the said B, his executors or administrators, shall seem requisite, and that as fully and essentially, as if I myself, or my executors or administrators, were personally present: HEREBY covenanting, that I, my executors or administrators, shall and will ratify and confirm, all and whatsoever, he or they shall lawfully do, or cause to be done, in, or about the premises, by vir-

* Debts being choses or things, in action, are not strictly speaking assignable, See Note under next Assignment.

Covenant that the assigner hath not done any act to hinder the assignee from receiving the debt, &c.

Provido, that on payment of the debts due from the assigner, the assignment shall be void.

tue of these presents: And I do hereby covenant with the said B, his executors and administrators, that I have not done, or suffered, and that I, my executors or administrators, will not do, or suffer, any act, matter, or thing, whereby, or by reason whereof, the said B, his executors, administrators, or assigns, shall, or may be, hindered or prevented, in, or from, the recovering or receiving the said debt, or sum of ———, hereby assigned, or any part thereof, or such other satisfaction, as can or may be had or obtained for the same, to his and their own use; AND farther, That I, my executors and administrators, will at all times hereafter, at the request of the said B, his executors, administrators, or assigns, make, do, and perform, all such farther, and other acts and things, as shall be reasonably required, for the proving of the said debt, and the better and more effectually enabling him, and them, to recover, receive, and enjoy, the same, according to the true intent and meaning of this assignment; PROVIDED always, that if I, the said A, my executors or administrators, shall, well and truly pay, or cause to be paid, unto the said B, his executors, administrators, or assigns, the said sum of ———, so due to him, the said B, as aforesaid, within three calender months after the date hereof, then this present assignment, and every article and clause herein-contained, shall be void and of no effect. IN WITNESS, &c.

No. XI.

Assignment of a Bond for Payment of Money.*

WHEREAS, A of ———, and B of ———, in, and by, one bond or obligation, bearing date the ——— day of ———, which was in the year of our Lord ———, became jointly and severally bound, to C of ———, in the penal sum of ———, conditioned for the payment of ———, and interest, at a day long since past, as by the said bond and condition thereof may appear; AND WHEREAS, there now remains due to the said C of ———, for principal and interest on the said bond, the sum of ———, NOW KNOW

* See Observations on the several species of English Deeds, Sec. 49.

ALL MEN BY THESE PRESENTS, That the said C, for, and in consideration of, the sum of ———, to him in hand paid, by D of ———, the receipt whereof the said C doth hereby acknowledge, HATH assigned, transferred, and set over, and by these presents, DOTH assign, transfer, and set over, unto the said D, the said recited bond or obligation, and the monies thereupon due and owing, and all his right and interest, in and to the same; AND the said C, for the consideration aforesaid, HATH made, ordained, constituted, and appointed, and by these presents DOTH make, ordain, constitute, and appoint, the said D, his executors and administrators, his true, and lawful, attorney and attornies, irrevocable, for him, and in his name, and in the name, or names, of his executors and administrators, but for the sole and proper use and benefit of the said D, his executors, administrators, and assigns, To ask, demand, and receive, of the said A and B, and either of them, their, and either of their, heirs, executors, and administrators, the monies due on the said bond: AND on non-payment thereof, them and either of them, their, and either of their, heirs, executors, and administrators, to sue for the same: AND, on payment, to deliver up and cancel, the said bond, and give sufficient releases, and discharges thereof, and one or more attorney, or attornies, under him to constitute; and whatsoever the said D, or his attorney, shall lawfully do in the premises, the said C doth hereby allow and confirm: AND the said C, doth covenant, promise, and agree, with the said D, That he, the said C, hath not received, nor will receive, the monies due on the said bond, or any part thereof; neither shall or will release or discharge the same, or any part thereof, nor any action, suit, bill, plaint, judgment, or execution thereupon, or for the same, or any part thereof, to be had, brought, prosecuted, or obtained; without the special licence and consent of the said D, his executors or administrators, therein or thereunto first had and obtained in writing, or the rule, order, or decree, of some court of law or equity; but will own and allow of all lawful proceedings for recovery thereof, he the said D, saving the said C, harmless of, and from, any costs that may happen to him thereby. IN WITNESS, &c.

Letter of attorney.

Covenant not to discharge the bond.

No. XII.

Another, by Endorsement.

KNOW all men by these presents, That I, the within-named A, for, and in consideration of, ———, of lawful money of Great Britain, to me in hand paid, by B of ———, at, or immediately before, the sealing and delivery of these presents, the receipt whereof I do hereby acknowledge, HAVE granted, bargained, sold, assigned, and set over, and by these presents do grant, bargain, sell, assign, and set over, unto the said B, his executors, administrators, and assigns, the within-written bond or obligation, and condition, and the sum of ———, mentioned in the said condition, and all interest due, and to grow due for the same, and all my right, title, interest, claim, and demand whatsoever, of, in, and to, the same; AND I do authorise the said B, in my name, to demand, sue for, recover, have, hold, and enjoy, the said sum of ———, and interest, to his own use and behoof for ever. IN WITNESS whereof, I have hereunto set my hand and seal, &c.

No. XIII.

*Assignment of a Bond, for performance of Covenants.**

WHEREAS A of ———, in and by one bond or obligation, bearing date ———, which was in the year of our Lord ———, became bound to B of ———, in the penal sum of ———, with a condition thereunder-written for the true and faithful performance, of all and every, the covenants, articles, clauses, provisos, payments, conditions, and agreements, whatsoever, which, on the part and behalf of the said A, his heirs, executors, and administrators, are,

* Bonds of this nature are generally transferred along with the Deed for the performance whereof they are granted. See Assignments, No. 3.

and ought to be observed, performed, fulfilled, accomplished, paid, done, and kept, according to the true intent and meaning of a certain indenture of release, bearing even date with the said bond or obligation, and made, or mentioned to be made, between the said A, of the one part, and the said B, of the other part, as by the said bond and condition thereof may appear: NOW KNOW ALL MEN BY THESE PRESENTS, That the said B, for, and in consideration of, the sum of ———, to him in hand paid by C of ———, the receipt whereof the said B, doth hereby acknowledge; HE, the said B, hath assigned, transferred, and set over, and by these presents DOTH assign, transfer, and set over, unto the said C, the said recited bond and obligation, and all the benefit, profit, advantage, right, and interest, of him the said B, of, in, or to the same; AND the said B, for the consideration aforesaid, hath made, ordained, constituted, and appointed, and by these presents Doth make, ordain, constitute, and appoint, the said C, his executors and administrators, his true, and lawful, attorney, and attornies irrevocable, for him, and in his name, and in the name of his executors and administrators; but for the sole and proper use, and benefit, of the said C, his executors, administrators, and assigns, to ask, sue for, levy, require, recover, and receive, of and from the said A, his heirs, executors, and administrators, the said penal sum of ———, mentioned in the said recited obligation, if the condition of the same obligation shall be broken and not performed; and on payment thereof, to deliver up and cancel the said bond, and give sufficient releases, &c. (*add a covenant "that B has not, nor will discharge the bond," as in the assignment No. 11, "but will own and allow, &c. "he the said C, saving the said B, harmless, &c." as in said assignment.*) IN WITNESS, &c.

Letter of attorney.

No. XIV.

*Assignment of a Military Officer's Pay, for securing payment of a Debt. **

THIS INDENTURE, made the — day of —, in the — year of the reign, &c. and in the year of our Lord —, between A of —, in the county of —, in Scotland, Esq; — in his Majesty's — regiment of foot, commanded by —, of the one part, and B of the city of —, and county of —, in Scotland aforesaid, merchant, of the other part. WHEREAS the said A, now at the time of the sealing and delivery of these presents, is, and stands, justly indebted to the said B, in the sum of —; NOW THIS INDENTURE WITNESSETH, That for securing the payment of the said sum of —, and also, for, and in consideration of, five shillings of lawful money, of Great Britain, to the said A in hand, well and truly paid, by the said B, at, or immediately before, the sealing and delivery of these presents, the receipt whereof is hereby acknowledged; HE, the said A, HATH assigned, transferred, and set over, and by these presents DOTH assign, transfer, and set over, unto the said B, ALL that his daily-pay and subsistence-money, which he is entitled to have and receive, as — in the said — regiment of foot, and all the right, title, interest, claim, and demand whatsoever, of him, the said A, in and to the same; TO have, hold, receive, and take, the said daily-pay and subsistence-money, unto the said B, his executors, administrators, and assigns, for and during the natural life of the said A, upon the trusts, and to and for the uses, intents, and purposes, herein after-mentioned; (that is to say) UPON TRUST, That he, the said B, his executors, administrators, and assigns, shall and do, from time to time, get in and receive the said daily-pay and subsistence-money, when, and as, the same shall become due and payable; and thereout, annually, to deduct and retain, for himself, the full sum of —, clear of all charges whatsoever, towards satisfaction and discharge of the said sum of —, so due and owing

* This Deed, when executed, should be entered in the Office of the Agent for the Regiment.

to him as aforesaid, with lawful interest for the same, to be computed from the date of these presents, and subject thereto; IN TRUST, annually to pay, apply, and dispose of, the residue of the said pay or subsistence-money, so to be got in and received as aforesaid, unto the said A, or such other person or persons, as he shall, by any writing or writings, under his hand and seal, from time to time, appoint to receive the same; PROVIDED ALWAYS, and it is hereby declared and agreed, that when, and so soon as, the said sum of ———, and all interest due thereon, and all the costs, charges, and expences, of the said B, in and about the premises, shall have been duly received by the said B, his executors, administrators, or assigns, THEN these presents, and the assignment hereby made, shall cease, determine, and be utterly void, to all intents and purposes whatsoever. AND for the better enabling the said B, his executors, administrators, and assigns, to get in and receive the said daily-pay and subsistence-money, HE, the said A, hath, and by these presents doth, nominate, ordain, constitute, and appoint, and, in his place and stead, put the said B, his executors and administrators, his true and lawful attorney, and attornies irrevocable, for him, and in his name, (but for the purposes aforesaid) to ask, demand, and receive, the said hereby assigned daily-pay and subsistence-money, of, and from C of ———, agent for the said regiment; and of, and from all and every person or persons, who are, or shall be liable to pay the same; And upon receipt thereof, or any part thereof, to make and give such acquittances, receipts, and discharges for the same, as shall be necessary and sufficient for that purpose; HE, the said A, hereby ratifying and confirming, all and whatsoever, his said attornies, shall lawfully do, or cause to be done, in and about the premises: AND the said A, doth hereby covenant, promise, and agree, to and with the said B, his executors, administrators, and assign., that he, the said A, shall and will, from and immediately after the execution of these presents, cause, or procure, his life to be ensured, and bear and pay all charges and expences, that shall or may attend the ensuring thereof, and shall and will so continue to ensure the same, and bear and pay all charges and expences attending the ensuring thereof, so long, and until the said sum of ———, together with all interest due thereon, shall be fully paid and satisfied to the said B, his executors, administrators, or assigns: AND it is hereby declared and agreed, That if the said A, shall, at any time hereafter, during the continuance of these presents, neglect, or refuse to ensure his life, or to bear

Proviso.

Letter of attorney.

Covenant that the assigner shall ensure his life.

Declaration that if he does not, the assignee may.

and pay all charges and expences attending the ensuring thereof, according to his covenant, herein before in that behalf contained; That then, and in such case, it shall and may be lawful to, and for, the said B, his executors or administrators, to ensure the same, and to deduct and reimburse himself, or themselves, the charges and expences attending the ensuring thereof, out of the said pay and subsistence-money, so to be received as aforesaid, by virtue of these presents. IN WITNESS whereof, the said parties to these presents, have hereunto, &c.

No. XV.

An Assignment to an Apprentice.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, A, of ———, send greeting. WHEREAS my apprentice B, has certain years yet to come and unexpired of his apprenticeship; to wit, ——— whole years, from the ——— day of ——— last past, as by his indenture of apprenticeship doth appear: NOW KNOW YE, that I, the said A, for divers good causes and considerations, me hereunto moving, HAVE given, granted, assigned, and set over, and by these presents, DO fully and absolutely give, grant, assign, and set over, unto C of ———, all right, title, duty, term of years to come, service and demand whatsoever, which I, the said A, have in or to the said B, or which I may have, or ought to have in him, by force and virtue of the said indenture of apprenticeship: AND MOREOVER, I the said A, do by these presents covenant with the said C, his executors and administrators, that notwithstanding any thing, by me, the said A, done, or to be done to the contrary, the said B, shall, during the said term of ———, well and truly serve the said C, as his master, and from his service shall not absent himself, day or night, during the term aforesaid; provided that the said C, shall well treat and use the said B; finding for him sufficient meat, drink, washing, and lodging, during the said term. IN WITNESS whereof, &c.

An Assignment of a Patent, for the sole use of an Invention. No. XVI.

THIS INDENTURE, made, &c. between A of ———, &c. of the one part, and B of ———, &c. of the other part. WHEREAS, the said A, hath, by long study and experience, invented a new method of ———, by a new and useful ———, never before known, or used in this kingdom: AND WHEREAS, on representing the same to his present Majesty, his said Majesty, by letters-patent, bearing date the ——— day of ———, hath given and granted, unto the said A, his executors, administrators, and assigns, and his, and their, deputy and deputies, servants and agents, special licence, full power, and lawful authority, to use, exercise, and enjoy, the said new-invention, which he, the said A, hath found out and attained, as aforesaid, in the kingdom of Great Britain, in such manner, and according to such limitations, as to him, the said A, his executors, administrators, and assigns, or any of them, shall be thought fit and convenient, and that he, the said A, his executors, administrators, and assigns, shall and may have, and enjoy, the sole benefit, profit, and advantage, growing and arising, by reason or means of the said invention, for and during the term of fourteen years, from the date of the said letters-patent; with a prohibition to all persons whomsoever, other than the said A, his agents or assigns, to use the said invention, or any thing thereto belonging, as in and by the said letters-patent, enrolled in the high-court of Chancery, may more fully appear: NOW THIS INDENTURE WITNESSETH, That the said A, for, and in consideration of, the sum of ———, of lawful money of Great Britain, to him in hand paid by the said B, the receipt whereof is hereby acknowledged, HATH granted, assigned, and set over, and by these presents DOTH grant, assign, and set over, unto the said B, his executors and administrators, the said letters-patent, and all the right, title, and interest of him, the said A, of, in, and to the new-invention aforesaid, granted and secured, by the aforesaid patent, from his present Majesty, as aforesaid: TO HAVE and to HOLD the said letters-patent, and new-invention, with the benefit, profit, and advantages thereof, to the said B, his executors, administrators, and assigns, in as ample

and beneficial a manner, to all intents and purposes, as he, the said A, by virtue of the said letters-patent, may, or might have, or hold the same, for and during all the residue, of the said term of fourteen years, in the said letters-patent mentioned: AND the said A, doth, by these presents, constitute and appoint, the said B, his assignee and grantee, of, and for, the said invention and the profits thereof, for the residue and remainder of the said term of fourteen years, granted by the patent above-mentioned; AND the said A, doth covenant to, and with the said B, that he, the said B, his executors and administrators, shall and may, by virtue of these presents, have, take, and receive, all profits and advantages whatsoever, that may or shall be made, for, or by reason of, the new-invention aforesaid; and that he, the said A, his executors and administrators, shall and will do, and execute, or cause, or procure to be made, done, and executed, all and every act and acts, thing and things, device and devices, for the farther, better, and more perfect, assigning and assuring of the patent above-mentioned, and the right, title, and interest of the said B, as he, the said B, his executors, administrators, and assigns, or his, or their counsel, learned in the law, shall advise and require. IN WITNESS, &c.

B A R G A I N A N D S A L E

* *A Bargain and Sale of Lands.*

THIS INDENTURE, made the — day of —, in the — year of the reign of our Sovereign, George the third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, &c. and in the year of our Lord —, between A, the elder, of —, A, the younger, son and heir-apparent of the said A, the elder, and B of —, son and heir of B, deceased, of the one part; and C of —, of the other part, WITNESSETH: That for, and in consideration of, the sum of —, of lawful money of Great Britain, to the said A, the elder, in hand paid by the said C, at or immediately before, the sealing and delivery of these presents, the receipt whereof, the said A, the elder, doth hereby acknowledge, and thereof, and of every part and parcel thereof, doth exonerate, acquit, and discharge, the said C, his heirs, executors, administrators, and assigns, and every of them for ever, by these presents; and in consideration of the several sums of five shillings, of the like lawful money, to the said A, the younger, and B, in hand paid by the said C, at, or before, the sealing and delivery of these presents, the receipt whereof they hereby acknowledge; THEY, the said A, the elder, A, the younger, and B, HAVE granted, bargained, sold, alienated, enfeoffed, and confirmed, and by these presents DO grant, bargain, sell, alienate, enfeoff, and confirm, unto the said B, his heirs and assigns for ever; ALL that, (*here describe the lands,*) with the appurtenances, situated, lying, and being, in —, in the county of —, by whatsoever name or names, or howsoever the same, or any of them, are called or known, with their, and every of their, appurtenances whatsoever; and the reversion and reversions, remainder and remainders, of all and singular the said —, and premises, hereby granted, and of every part and parcel thereof, and of all rents, issues, services, and profits, to them, or any of them, or any part or parcel of them, or of any of them, incident, belonging, and appertaining: AND also, all and every, the estate, and estates, rights, titles, claims, interest, and demands whatsoever, of

* See Observations on the several species of English Deeds, Sect. 29, 30, 31.

them, the said A, the elder, A, the younger, and B, or either of them, in, to, or out of, the said ———; AND all, and every, the deeds, evidences, writings, and muniments whatsoever, touching or concerning the said ——— and premises whatsoever, hereby granted, or mentioned to be granted, or any of them, or any part or parcel thereof: To HAVE and to HOLD, the said ———, with their, and every of their, appurtenances, unto the said C, his heirs and assigns for ever; to the only proper use and behoof, of him, the said C, his heirs and assigns for ever. AND the said A, the elder, Doth hereby grant for him, and his heirs, that he, the said A, and his heirs, the said ———, with all and singular their, and every of their, rights, members, and appurtenances, unto the said B, his heirs and assigns, against him, the said A, and his heirs, and against all, and every other, person and persons whomsoever, shall and will warrant, and for ever defend by these presents. AND the said A, the elder, and A, the younger, do for themselves, severally, and for their several heirs, executors, and administrators, and for every of them, covenant, &c. *(to levy a fine.—That the bargainer is lawfully seized, and shall continue seized, till an absolute estate be vested in the bargainee.—That the bargainer hath power to convey.—For peaceable enjoyment.—Free from encumbrances.—For farther assurance.—Said assurances to be to the use of the bargainee.—Bargainer not to encumber the premises. See Covenants.)* IN WITNESS whereof, &c.

Signed, sealed and delivered,
 (being first duly stamped,)
 in the presence of

} D.
 E.

A.



A.



B.



C.



Note, Throughout the British West India islands, and colonies of America, conveyances to land are usually made by Lease and Release; and even in England such conveyances are seldom made by Bargain and Sale; excepting when it is necessary to enrol the conveyance for the purpose of barring and cutting off entails, by suffering a common recovery.

B O N D S.

* *Bond for Payment of Money.*

No. 1.

KNOW ALL MEN BY THESE PRESENTS, That we, A of ———, and B of ———, Merchants, are held and firmly bound, to C of ———, Esquire, in ——— pounds, (*double the condition, except when by an infant for necessities, and then only the sum due,*) of lawful money of Great Britain, to be paid to the said C, or his certain attorney, executors, administrators, or assigns; FOR which payment, to be well and truly made, we bind ourselves, and each of us, by himself, our, and either of our, (*when above two obligers, say "our and every of our"*) heirs, executors, and administrators, firmly by these presents, sealed with our seals, dated the ——— day of ———, in the year of our Sovereign Lord, George, &c. and in the year of our Lord ———. THE CONDITION of this obligation Condition, is such, that if the above-bound A and B, or either of them, their heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, to the above-named C, his executors, administrators, or assigns, the full sum of ———, (*the half of the sum mentioned in the obligation, except when by an infant,*) of lawful money of Great Britain, with lawful interest for the same, on the ——— day of ——— next ensuing the date of the above-written obligation, then this obligation to be void, or otherwise to remain in full force.

Sealed and delivered, (being first duly stamped,) in the presence of

D.
E.

A.



B.



* See Observations on the several species of English Deeds, Sect. 47.

Other Conditions.

No. II.

To pay money
at different
times.

THE CONDITION of this obligation is such, That if the above-bound A, &c. &c. the full sum of ———, of lawful money of Great Britain, in manner following, that is to say, the sum of ———, part thereof, on the ——— day of ———, ——— pounds more thereof, on the ——— day of ———, and ——— pounds more, the residue, and in full payment thereof, on the ——— day of ———, which will be in the year of our Lord ———, then this obligation to be void; BUT if default shall be made in payment of any of the said several and respective sums above-mentioned, or any part thereof, or any of the said several and respective days and times above-limited for payment thereof, then this obligation to remain in full force.

No. III.

To pay money
quarterly.

(*AS above, mentioning the first four quarters, and leaving out the words, "residue and in full payment," then after the words, "year of our Lord," say,*) the sum of ——— more thereof, on the ——— day of ——— next ensuing, and so on quarterly, every quarter of a year, one next and immediately ensuing another, on every of the quarter days aforesaid, the sum of ———, until the sum of ———, shall be, in such manner, fully satisfied and paid, then, &c. But if default, &c. &c. (*as in the preceding condition.*)

No. IV.

For payment
of an annuity.

THE CONDITION of this obligation is such, That if the above-bound A, &c. one annuity or yearly sum of ———, of lawful money of Great Britain, at, and upon, the four most usual feasts, or times of the year, (that is to say,) on the feast of Saint Michael the Archangel,—the birth of our Lord, Christ,—the annunciation of the blessed virgin, Mary,—and the nativity of Saint John the Baptist,—by even and equal portions; The first payment thereof, to begin and be made on the feast day of ——— next ensuing, &c. then this obligation to be void; BUT if default, &c. &c.

No. V.

THE CONDITION of this obligation is such, That if the above-bound A, &c. the sum of ———, of lawful money of Great Britain, on the ——— day of ———, next ensuing the date of the above-written obligation: And also, the farther sum of ———, of like lawful money, on the ——— day of ———, which will be in the year of our Lord ———, without any deduction for taxes, assessments, or any other impositions whatsoever, according to the purport of certain indentures, bearing even date with the above-written obligation, and made between the said B of the one part, and the said A of the other part, Then this, &c. or else, &c.

To pay money
according to a
mortgage.

No. VI.

THE CONDITION of this obligation is such, That if the above-bound A, his heirs, executors, and administrators, do and shall, in all things, well and truly observe, perform, fulfil, accomplish, pay, and keep, all and singular the covenants, grants, articles, clauses, provisos, payments, conditions, and agreements whatsoever, which, on the part and behalf of the said A, his heirs, executors, and administrators, are, or ought to be observed, fulfilled, accomplished, paid, done, and kept, comprised or mentioned in certain indentures, bearing even date with the above-written obligation, made or mentioned to be made, between the said A of the one part, and the said B of the other part, according to the purport, true intent, and meaning of the same indentures, Then, &c. or else, &c.

To perform
covenants.

No. VII.

THE CONDITION of this obligation is such, That if the above-bound A, do and shall, upon and at the request of the said B, his heirs or assigns, on or before the ——— day of ——— next ensuing the date above-written, convey and assure, or cause to be well and

To make and
deliver con-
veyances.

sufficiently conveyed and assured, unto the said B, his heirs and assigns, or to such other person or persons, and his or their heirs, as the said B shall nominate and appoint, and to such uses as he shall direct, ONE messuage or tenement, &c. situated, &c. now in the possession of ———, by such conveyances and assurances in the law, as by the said B, his heirs and assigns, or his or their counsel, learned in the law, shall be reasonably devised, or advised and required, freed and discharged of, and from all encumbrances whatsoever.

And in the
mean time the
obligee to re-
ceive the pro-
fit.

And also, if he the said A, his, &c. and either of them, do and shall, until such conveyance and assurance be made and executed as afore-
said, permit and suffer, the said B, his heirs or assigns, peaceably and quietly, to have, receive, and take, to his, or their own proper use and uses, the rents, issues, and profits, of all and singular the premises, and of every part and parcel thereof, without any manner of let, suit, trouble, disturbance, hinderance, and denial, of the said A, his &c. or any of them, or of any other person or persons whomsoever, by his, or their, or any of their, means, right, title, or procurement, Then this obligation, &c. &c. or else, &c.

No. VIII.

To execute an
assignment.

(*AS in the last, to the words "date above-written,"*) Seal and execute a good and sufficient assignment in the law, of all such estate and interest, as he, the said A, now hath in the lands and tenements of ———, unto the above-named B, his heirs or assigns, or to such other person or persons, as the said B shall nominate and appoint, and to such uses as he shall direct, Then this obligation, &c. or else, &c.

No. IX.

That the obli-
ger shall suffer
his wife to
make a will.

WHEREAS, a marriage is intended to be shortly had and solemnized, between the above-bound A, and Isabella B of ———. NOW the condition of this obligation is such, that if after the said intended marriage had and solemnized between the said A, and Isa-

bella B, the said A, shall, peaceably and quietly, permit and suffer the said Isabella B, in due form of law, to sign and seal, publish and declare, her last will and testament in writing; and in and by the same, to give, will, and bequeath, or otherwise dispose of, at her free will and pleasure, unto and among such person and persons, as she shall think proper, the sum of ———, of lawful money of Great Britain: AND FARTHER, in case of the said A's surviving the said Isabella B, if the said A, his heirs, executors, or administrators, or any of them, upon reasonable request to him or them in that behalf to be made, by any such person or persons, to whom the said Isabella B, shall give, will, and bequeath any such sum or sums of money, not exceeding, in whole, the said sum of ———, or the value thereof, shall well and truly pay, or cause to be paid, all and every such sum and sums of money, so to be given, willed or bequeathed, as aforesaid, by the said Isabella B, in such manner as shall be by her appointed, Then this obligation to be void, or else to be and remain in full force and virtue.

The Obligation must be from the intended husband, to a friend of the intended wife.

THE CONDITION, &c. That if the above-bound A, his heirs, &c. do and shall, well and truly pay, or cause to be paid, unto the above-named B, his executors, &c. the sum of ———, of lawful money of Great Britain, according to the proviso, contained in a certain indenture of release, by way of mortgage, bearing date the ——— day of ———, made, or mentioned to be made, between the said A, of the one part, and the said B, of the other part. And also, that the said A, his heirs, &c. Do and shall, in all things, well and truly observe, perform, fulfil, accomplish, pay, and keep, all and singular the covenants, grants, articles, clauses, provisos, payments, conditions, and agreements whatsoever, which, on the part and behalf of the said A, his heirs, &c. are, or ought to be observed, performed, fulfilled, accomplished, paid, done, and kept, comprised, or mentioned, in the said indenture of release, by way of mortgage, according to the purport, true intent, and meaning of the same indenture, Then this obligation, &c. or else, &c.

No. X.

To pay money, and perform covenants, according to a mortgage.

No. XI.

Of an arbitration bond.

THE CONDITION of this obligation is such, That if the above-bound A, his heirs, executors, and administrators, and every of them, do and shall, on his and their part and behalf, in all things, well and truly stand to and obey, abide by, observe, perform, fulfil, and keep, the award, order, arbitrament, final end, and determination, of C, D, and E, (or any two of them,) arbitrators, indifferently chosen and elected, and named, as well on the part and behalf of the said A, as on the part and behalf of the above-named B, to arbitrate, award, order, judge, determine, and agree, touching and concerning all, and all manner of, actions, cause, and causes of action, suits, bills, bonds, specialties, covenants, contracts, promises, accounts, reckonings, sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages, and demands whatsoever, both in law and in equity, at any time heretofore had, moved, brought, commenced, sued, prosecuted, done, suffered, committed, or depending, by, or between the said parties, so as the award of the said arbitrators, (or any two of them,) be made and set down in writing, under their hands and seals, ready to be delivered to the said parties in difference, on, or before, the — day of —, Then the above-written obligation to be void, or else to remain in full force and effect.

No. XII.

Bond of Indemnity, to one Bound for the Obliger, in a Bond for Payment of Money.

KNOW ALL MEN BY THESE PRESENTS, That I, B of —, in the county of —, Merchant, am held and firmly bound to A of —, in the county of —, aforesaid, in — pounds, of lawful money of Great Britain, to be paid to the said A, or his certain attorney, executors, administrators, or assigns; for which payment, to be well and truly made, I bind myself, my heirs, executors, and administrators, firmly by these presents, sealed with my seal. Dated the — day of —, in the

year of our Sovereign Lord, George the third, &c. by the grace of God, &c. and in the year of our Lord ———.

WHEREAS, the above-named A, at the special instance and request of the above-bound B, together with him, the said B, is, in and by one obligation, bearing even date with the above-written obligation, held and firmly bound, unto C of ———, in the county of ———, Gentleman, in the penal sum of ——— pounds, of lawful money of Great Britain, conditioned for the payment of the sum of ———, with interest for the same, after the rate of five pounds, per centum, per annum, on the ——— day of ——— next ensuing the date of the said recited obligation; as in and by the said recited obligation, and condition there underwritten, may more fully appear. NOW THE CONDITION of this obligation is such, That if the said B, his heirs, executors, or administrators, do and shall, well and truly pay, or cause to be paid unto the said C, his executors, administrators, or assigns, the said sum of ———, with interest for the same, after the rate of five pounds, per centum, per annum, on the ——— day of ——— next ensuing the date of the said recited obligation, according to the true intent and meaning thereof, and in full discharge and satisfaction of the said recited obligation; AND if the said B, his heirs, executors, or administrators, shall also, from time to time, and at all times hereafter, save harmless, and indemnify him, the said A, his executors and administrators, and his or their goods and chattels, of and from all damages, sums of money, costs, and charges, which he, they, or any of them, shall or may at any time hereafter be put into, by reason of the said A, his being bound with the said B, for the payment of the sum of money and interest aforesaid, Then this obligation to be void, or else to remain in full force.

C E R T I F I C A T E S.

* **T**O ALL to whom these Presents shall come,

No. I.

I, A, Lord Provost and chief Magistrate of the city of ———, in Scotland, in pursuance of an act, made and passed in the fifth year of the reign of his late Majesty, King George the second, entitled, "*An act for the more easy recovery of debts in his Majesty's plantations and colonies of America,*" Do hereby certify, That on the day of the date hereof, personally came and appeared before me, B, the deponent named in the affidavit hereunto annexed, being a person well known, and worthy of good credit, and by solemn oath, which the said deponent then took before me, upon the Holy Evangelists of Almighty God, did solemnly and sincerely declare, testify and depose to be true, the several matters and things mentioned and contained in the said annexed affidavit.



IN faith and testimony whereof, I the said Lord Provost, have caused the seal of the said city of ———, to be hereunto put and affixed; and the (*here mention the account or other writings*) mentioned and referred to, in the said affidavit, to be hereunto also annexed. DATED the ——— day of ——— in the year of our Lord ———.

A.

† **T**O ALL to whom these Presents shall come,

No. II.

I, A, Lord Provost of the city of ———, in Scotland, Do hereby certify, That on the day of the date hereof, personally came and appeared before me, B, the deponent named in the annexed affidavit,

* See Affidavits, No. 3. and Observations on the Act 5th George 2d.

† See Affidavits No. 14, 15, 16. and Observations on the essential requisites of English Deeds, Sect. 23.

C E R T I F I C A T E S.

being a person well known, and worthy of good credit, and by solemn oath, which the said deponent then took before me, upon the Holy Evangelists of Almighty God, did solemnly and sincerely declare, testify, and depose to be true, the several matters and things mentioned and contained in the said annexed affidavit.



IN faith and testimony whereof, I, the said Lord Provost, have caused the seal of the said city of ———, to be hereunto put and affixed, and the (*indentures of lease and release—deed-poll—letter of attorney, as it may be*) mentioned in, and referred to by, the said affidavit, to be hereunto also annexed. Dated the ——— day of ——— in the year of our Lord ———.

A.

No. III.

***I**, A of the city of ———, in Scotland, Notary Public, duly admitted, allowed, and sworn, dwelling therein, DO hereby certify and make known, to all whom these presents shall and may concern, That B, who hath signed and attested the above deposition, as sworn before him, is now Lord Provost, and chief Magistrate, of the said city of ———, (*or, as the case may be, is now one of the Magistrates of the said city of ———, or, one of his Majesty's Justices of the peace, or Sheriff, or under Sheriff, of the county of ———;*) and that the name B, subscribed as jurat of the said deposition, is of the proper hand writing of the said B, and was so subscribed by him, in my presence, on the day, year, and at the place therein-mentioned.

In witness whereof, I have hereunto set my hand, (and seal, *if the Notary has a seal of office,*) this ——— day of ———, in the year of our Lord ———.

A.

* See Observations on the essential requisites of English Deeds, Sect. 30.

C H A R T E R - P A R T Y.

THIS CHARTER-PARTY OF AFFREIGHTMENT, indented, made, and agreed upon, the — day of —, in the year of our Lord —, between A of —, Master of the good ship or vessel, called the —, of the burden of — tons, or thereabout, now lying at anchor in the harbour of —, of the one part, and B of —, Merchant, of the other part, WITNESSETH; That the said A, hath granted, and doth hereby grant, and to freight-let, unto the said B, the said ship or vessel, called the —, for the voyage hereunder-mentioned: and doth hereby for himself, his executors and administrators, covenant, promise, and agree, to and with the said B, his executors and assigns, That on or before the — day of —, next ensuing, the said ship shall be ready, and fitted, and provided in all respects, for such a voyage, and shall receive and take such goods as the said B shall load on board her outwards, and shall sail directly unto —; and within — after her arrival there, or sooner, shall unload and deliver, all her said outward lading, unto the factors, agents, or assigns, of the said B; and there also shall receive and take on board her, all such, (*mention here the kinds of goods*) as the said B, his factors, agents, or assigns, shall load, or tender to be laden, on board the said ship, as much as can be stowed and carried in her, over and above her victuals, tackle, and apparel; and being so laden shall depart thence for —, and return directly unto the harbour of —; and within — days after her arrival there, shall make a true and full discharge and delivery of her said homeward lading, unto the said B, his executors, or assigns respectively, and end and finish her said intended voyage, wind and weather, the danger of the seas, and the restraint of Princes, always excepted. AND the said B for himself, his executors and administrators, Doth hereby covenant, promise, and agree, to and with the said A, his executors and assigns, That he, the said B, his executors, factors, agents, or assigns, shall and will unload his outward goods, and fully load the said ship, at — aforesaid, with —, as much as she can stow and carry in her, above her victuals, tackle, and apparel; and

C H A R T E R - P A R T Y.

receive and discharge the same, from on board her, at ———, within the respective times before-limited; and shall also, well and truly pay, or cause to be paid, unto the said A, his executors or assigns, freight for every ton of ———, which shall be so laden on board the said ship, at ———, and delivered to the said B, his executors, factors, agents, or assigns, at ———, as aforesaid, at and after the rate of ——— pounds, of lawful money of Great Britain, per ton, for every ton of ———, and proportionably for a less or greater quantity than a ton, accounting ——— weight neat to a ton; one half part thereof, within ——— days after a true and full discharge and delivery, and the other half part, within ——— months next after such discharge, with ——— per ton for primage; and shall also pay average as accustomed, together with two third parts of all port-charges to grow due during the said voyage, the remaining third part thereof to be paid by the said A. And it is hereby agreed, by and between the said parties to these presents, That all and whatsoever goods, with which the said B shall load outwards the said ship, are and shall be carried and transported to the said ———, freight free. And for the true performance of all and every the covenants aforesaid, each of the said parties bindeth himself, his heirs, executors, and administrators, unto the other of them, his heirs, executors, and administrators, in the penal sum of ——— (*double the value of the freight.*) IN WITNESS whereof, &c.

Sealed and delivered, &c.

C O N F I R M A T I O N S.

A Confirmation of Indentures of Lease and Release, by way of Mortgage.

No. I.

THIS INDENTURE, made the — day of —, in the — year of the reign of our Sovereign, George the third, by the grace of God of Great Britain, France, and Ireland, King, defender of the faith, &c. and in the year of our Lord —, between A of —, &c. of the one part, and B of —, &c. of the other part. WHEREAS by indentures of lease and release, bearing date the — and — days of the month of —, in the year of our Lord —, made, or mentioned to be made, between C of the county of —, —, &c. only son and heir of D, late of the town of —, in the county of —, aforesaid, deceased, and Joanna, his wife, also deceased, of the one part, and the said A of the other part: The said C, for the better securing the payment of the sum of —, then due and owing from him, to the said A, on bond, bearing date the — day of —, in the year —, and the interest then due, and which should thereafter grow due, for the same; and also, for, and in consideration of, the sum of five shillings, to him in hand paid by the said A, DID bargain, sell, release, and confirm, unto the said A, ALL that —, situated, lying, and being in —, containing by estimation —; (be the same more or less,) and also ALL that other —, and one barn or stable thereunto belonging and appertaining, situated, lying, and being in —; and also, the reversion in fee, expectant from and after the death of H, widow, formerly the wife of I; and all other reversion and reversions, remainder and remainders whatsoever, of, and in, ALL that —, with the appurtenances, commonly called and known by the name of —, situated, lying, and being in —, late in the occupation of M; together with all ways, easements, woods, underwoods,

* See Observations on the several species of English Deeds, Sect. 23.

C O N F I R M A T I O N S.

trees, commons, common of pasture, profits, liberties, advantages, hereditaments, and appurtenances whatsoever, of the said several ———, and ———, &c. or to, or with, the same, had, reputed, used, occupied, or enjoyed, as part, parcel, or member thereof: to have and to hold, all and singular the premises, to the said A, his heirs and assigns, to the only proper use and behoof, of the said A, his heirs and assigns for ever; under a proviso nevertheless, to be void on the payment of the said sum of ———, due on the said bond, and the interest then due, and which should grow due on the same, on the ——— day of ——— then next ensuing, as by the said indentures of lease and release, relation being thereunto had, may more fully appear; WHICH said sum of money, was not paid according to the said proviso, (nor has at any time since been paid,) whereby, the estate of the said A, of and in the said premises, became absolute in *law*, SUBJECT nevertheless, in *equity*, to be redeemed on payment of the said principal money and interest: NOW THIS INDENTURE WITNESSETH, That the said A, for, and in consideration of, five shillings of lawful money of Great Britain, to him in hand paid by the said B, at, or immediately before, the sealing and delivery of these presents, the receipt whereof he doth hereby acknowledge; and for other good causes and considerations him hereunto moving, HATH bargained, sold, released, and confirmed, and by these presents, DOTH bargain, sell, release, and confirm, unto the said B, (in his actual possession now being, by virtue of a bargain and sale to him thereof made, by the said A, by indenture, bearing date the day next before the day of the date of these presents, for the term of one year, commencing from the day next before the day of the date of the same indenture, in consideration of five shillings to him paid, and by virtue of the statute for transferring uses into possession,) and to his heirs and assigns, ALL and SINGULAR the said ———, with the appurtenances herein above-mentioned; AND ALL other the ———, in and by the said recited indentures of lease and release, bargained, sold, released, and confirmed, or meant, mentioned, or intended so to be, and every part and parcel thereof, with their, and every of their, rights, members, and appurtenances; and also, all the estate, right, title, interest, use, trust, property, benefit, and demand whatsoever, of him the said A, of, in, or out of the said premises, every, or any part, or parcel thereof, in any wise howsoever, To HAVE and to HOLD, the said ———, and ———, &c. and all and singular other the

CONFIRMATIONS.

83

premises herein before-mentioned, or intended to be hereby released, and every part and parcel thereof, with their, and every of their, rights, members, and appurtenances, unto the said B, his heirs and assigns, to the use and behoof of the said B, his heirs and assigns for ever; IN TRUST NEVERTHELESS, and to, and for, the only proper use, benefit, and behoof, of the said A, his heirs and assigns, and to the intent that the said hereby released premises, with their appurtenances, shall be conveyed and disposed of, from time to time, as he or they shall direct or appoint, and to and for no other use, intent, or purpose whatsoever. IN WITNESS, whereof, &c.

Signed, sealed, and delivered, &c. }

A



B.



*A Confirmation of a Mortgage by Lease and Release, No. 11.
wherein the parcels are more particularly described:
And an Agreement as to paying and reducing the
interest-monies, and as to ensuring the premises from
loss by fire.*

THIS INDENTURE, made the — day of —, &c. between A of —, of the one part, and B of —, of the other part. WHEREAS, by indentures of lease and release, bearing date the — and — days of —, the release being quadrupartite, and made between C of —, and Amelia his wife, of the first part, D of —, of the second part, the said A of the third part, and the said B of the fourth part; in consideration of the sum of —, (by the direction of the said C, and Amelia his wife, testified as therein mentioned) to him, the said D, paid by the

C O N F I R M A T I O N S.

faid B; and also of the farther sum of ———, paid by the said B, to the said A, making together the sum of ———, they the said D, and B, at the request and by the direction of the said C, and of Amelia his wife, and of the said A, testified as aforesaid, did bargain, sell, release, and confirm, and he, the said A, did grant, sell, release, ratify, and confirm, unto the said B, and his heirs, ALL that close of meadow or pasture-ground, theretofore called ———, and all and singular other the premises, which by the several indentures of lease and release therein recited, or any of them, were granted and released, or mentioned, or intended so to be, with their appurtenances, and the reversion, &c. TO HOLD the said premises, unto, and to the use of, the said B, his heirs and assigns for ever: IN which indenture of release is contained a proviso, or agreement, for redemption of the said premises in mortgage, on the said A, his heirs, &c. paying to the said B, his executors, &c. at the place therein-mentioned, the sum of ———, of lawful money, in manner following, that is to say, the sum of ———, part thereof, on the ——— day of ———, then, and now, next ensuing, and the farther sum of ———, the residue, and in full thereof, on the ——— day of ———, then next following, which will be in the year ———; without any deduction for taxes, or otherwise, in such manner as in the said indenture of release is mentioned and expressed, as in, and by the said in part recited indentures of lease and release, relation being thereunto had, may more fully appear. AND WHEREAS, the said close of meadow, or pasture ground, &c. by the said recited indentures of lease and release so conveyed as aforesaid, not being therein fully and particularly described; IT is hereby agreed, by and between the parties to these presents, that the same shall be more fully and particularly described, in such manner as herein after is mentioned, and expressed: and also, that the interest of the said principal sum of ———, so secured as aforesaid, shall be liable and subject to be reduced and paid, in such manner as is herein-after stipulated: and also, that he, the said A, shall ensure the said mortgaged premises, from loss or damage by fire, in such manner as herein-after is mentioned: NOW THIS INDENTURE WITNESSETH, That in pursuance of the said recited agreement, and for the better securing the payment of the said principal sum of ———, with interest, according to the aforesaid proviso, HE, the said A, hath granted, ratified, and confirmed, and by these presents doth grant, &c. unto the said B and his heirs; ALL those pieces or

parcels of ground, and all those several messuages or tenements, coach-houses, stables, and mill, and their, and every of their, appurtenances, situated, lying, and being in or near ———, or some or one of them, as the same now are, or lately were, in the several occupations of ———, and ———, or some of them, or their, or some of their, under tenants or assigns; the rents whereof, do amount in whole, to the yearly sum of ———, or thereabouts; and are the same premises, as are, and were conveyed, or intended to be conveyed, unto the said B and his heirs, by the said indentures of lease and release, bearing date the ——— and ——— days of ———: to HAVE and to HOLD the said premises, unto the said B and his heirs and assigns, to the use of the said B, his heirs and assigns, SUBJECT to the aforesaid proviso of redemption, in the said recited indenture of release contained: AND THIS INDENTURE ALSO WITNESSETH, That in farther pursuance of the said recited agreement, for the better securing payment of the said sum of ———, and interest, unto the said B, his executors, &c. according to the said proviso, he the said A, for himself, his heirs, &c. DOTH hereby covenant, promise, and agree, to and with the said B, his executors, &c. in manner following, that is to say, That he, the said A, shall and will immediately, and from time to time, and at all times hereafter, during the continuance of the security so made to him, the said B, as aforesaid, ensure, and keep ensured, at least the sum of ———, on the aforesaid granted and released messuages, &c. as to fire and damage happening thereby, either in the ———, fire-office, or such other public fire-office, as he, the said B, his executors, &c. shall, from time to time, direct or appoint; and also, that he, the said A, his heirs, executors, and assigns, at his and their charge, upon the taking or renewing of all, every, or any such policies of insurance, shall assign the same to the said B, his executors, &c. SUBJECT nevertheless, to the aforesaid proviso, for redemption of the said premises, herein before-mentioned: AND lastly, it is hereby mutually agreed, by and between the said parties to these presents, That if the said A, his heirs, or assigns, shall and do, yearly and every year, from time to time, and for so long as the said sum of ——— principal money, advanced and lent by the said B, or any part thereof, shall continue and remain due and owing to the said B, his executors, &c. upon the aforesaid mortgage or security, well and truly pay, or cause to be paid, unto the said B, his executors, &c. by equal half yearly payments, upon every ———

CONFIRMATIONS.

day of ———, and ——— day of ———, in every year; or within ——— days next after every of the said half yearly days of payment, the yearly sum of ———, in lieu of the interest agreed to be paid for the said principal sum of ———; then and in such case, and and not otherwise, he, the said B, his, &c. shall and will, from time to time, receive and accept of the same, in lieu and satisfaction of, and for the interest, after the rate of ——— per cent. per annum, in the said recited indenture of release provided and covenanted to be paid, for the said principal sum of ———: and shall and will, from time to time, give receipts and discharges accordingly, any covenant, proviso, or agreement, in the said herein before recited indenture of release contained, to the contrary thereof in any wise notwithstanding. IN WITNESS whereof, the said parties, to these presents, have hereunto set their hands and seals, the day of the month, and year of our Lord, first before-written.

Signed, sealed, and delivered,
(being first duly stamped,)
in the presence of } H.
L.

A.



B.



See another Precedent of a Confirmation under "Mortgages."

C O V E N A N T S.

AND the said A and B, for themselves, severally, and for their several heirs, executors, and administrators, and for every of them, covenant, promise, and agree, to and with the said C, and his heirs, executors, and administrators, and to and with every of them, by these presents; That they, the said A, and B, and D, and E, shall and will, before the ——— day of ———, next ensuing the date hereof, before the Justices of the court of Common Pleas, at Westminster, in due form of law, levy to the said C, and his heirs, one fine, *sur cognizance de droit, come ceo, &c.* and with proclamations, according to the form of the statute in such case made and provided, of ALL and SINGULAR the messuages, lands, tenements, hereditaments, and premises, aforesaid, by such apt names, quantities, qualities, and number of acres, and in such sort, manner, and form, as by the said C, his heirs or assigns, or by his or their counsel, learned in the law, shall be reasonably devised, or advised, and required.

No. I.

To levy a fine.

—— AND the said A, for himself, his heirs, executors, and administrators, and for every of them, Doth covenant, promise and agree, to and with the said B, his heirs and assigns, and to and with every of them, by these presents, in manner and form following; that is to say, That the said A, now is the true and lawful owner of the said ———, and all and singular other the premises hereby granted, or mentioned to be hereby granted, and of every part and parcel thereof, with their, and every of their, appurtenances; and is rightfully and absolutely seized thereof, and of every part and parcel thereof, of a good, pure, absolute, and indefeasible estate of inheritance, in fee-simple, without any manner of condition, trust, contingencies, covenant, proviso, or limitation of use or uses, or other restraint, matter or thing whatsoever, to alter, change, charge, determine, encumber, defeat, or evict, the same: And that he shall and will continue to be seized thereof, and of every part and parcel thereof, until a good, perfect, and absolute estate in fee-simple, shall be thereof vested in him, the said B, and his heirs, according to the true intent and meaning of these presents.

No. II.

Bargainer
lawfully seized.

No. III.

That a lease
assigned is
good.

— DOTH covenant and agree, to and with the said B, his executors, administrators, and assigns, that notwithstanding any act, or thing, by the said A done to the contrary, the said recited indenture of lease, is a good, true, perfect, and indefeasible lease in the law, at the time of sealing and delivery of these presents; And so shall stand, remain, continue, and be, unto the said B, his executors, administrators, and assigns, for, and during, the remainder of the term of years thereby granted, under the rents, and covenants, therein-mentioned and contained.

No. IV.

Bargainer
hath power to
convey.

— AND that the said A, now hath good right, lawful and absolute power, and authority in himself, to grant, alienate, and convey, all and singular the said messuages, lands, tenements, hereditaments, and premises, hereby granted, or mentioned, or intended to be hereby granted as aforesaid, and every part and parcel thereof, unto the said B, his heirs and assigns, to the only use of him, the said B, his heirs and assigns, in manner and form aforesaid.

No. V.

For peaceable
enjoyment.

— AND that the said B, his heirs and assigns, and every of them, shall, or lawfully may, from time to time, and at all times hereafter, have, hold, use, occupy, possess, and enjoy, all and singular the said messuages, lands, tenements, hereditaments, and premises, hereby granted, or mentioned to be hereby granted, and every part and parcel thereof; with all and singular their, and every of their, appurtenances; AND all and every the rents, issues, and profits thereof, arising, accruing, or growing, to have, receive, and take, without any manner of let, suit, trouble, vexation, eviction, disturbance, or molestation whatsoever, of, or by, the said A, his heirs or assigns, or any other person or persons whomsoever, lawfully claiming, or to claim, the said messuages, lands, tenements, hereditaments, and premises, or any part or parcel thereof, (except as is herein after excepted.)

— AND also, that the said B, his executors, &c. paying the rent reserved, and performing the covenants, conditions, and agreements, in the above recited lease mentioned, shall and may, peaceably and quietly, have, hold, occupy, possess, and enjoy, the said ———, for, and during, the residue of the term aforesaid, without the let, suit, trouble, or interruption of him, the said A, his, &c. or of any other person or persons, lawfully claiming, or to claim, any right, or interest in the premises, by, from, or under him, them, or any of them.

No. VI.

For peaceable enjoyment during a term of years.

— AND that the said messuage ———, hereby granted, or mentioned, or intended, so to be, as aforesaid, and every part and parcel thereof, with all and singular, their, and every of their, appurtenances, now are, and from henceforth for ever after, shall continue, remain, and be, unto the said B, his heirs and assigns, free and clear, and freely and clearly acquitted, exonerated, and discharged, of and from, all, and all manner of, former and other, bargains, sales, gifts, grants, feoffments, devises, uses, jointures, dowers, entails, estates, leases, rights, titles, rents, arrearsages of rents, issues, fines, post-fines, amerciaments, debts, duties, judgments, executions, statutes-merchant and of the staple, and all debts of record, extents, seizures, charges, titles, troubles, forfeitures, annuities, and encumbrances whatsoever, had, made, committed, done, acknowledged, or suffered, or caused to be had, made, committed, done, acknowledged, or suffered, by the said A, or by any other person or persons whomsoever.

No. VII.

Free from encumbrances.

— AND the said A, Doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, to, and with, the said B, his executors, administrators, and assigns, That he, the said A, hath not done, committed, or willingly suffered, any act, matter, or thing, whereby, the within-indenture and mortgage, and the lands and premises thereby demised, and mortgaged, or any part

No. VIII.

That a mortgage is not encumbered.

thereof, is, are, shall, or may be, released, forfeited, burdened, charged, or encumbered, in title, charge, estate, or otherwise howsoever; And that he, the said A, hath not released, or discharged, the said recited bond and condition, or received any sum or sums of money thereby secured.

No. IX.
For farther
assurance.

— AND the said A for himself, his heirs, executors, and administrators, and every of them, doth covenant, and grant, to, and with, the said B, his heirs and assigns, and to, and with, every of them, by these presents, That he, the said A, his heirs and assigns whomsoever, having, or lawfully claiming, or who shall, or may, at any time, or times hereafter, have, or lawfully claim, any estate, right, title, or interest, of, in, or to, the said premises, hereby granted, or mentioned to be granted, or of, in, or to, any part, or parcel thereof; shall and will, from time to time, and at all times hereafter, at, and upon, the reasonable request, and at the costs, and charges, in the law, of the said B, his heirs and assigns, or some of them, make, do, levy, execute, acknowledge, and suffer, or cause to be made, done, levied, acknowledged, executed, and suffered, All and every such, farther and other, reasonable act and acts, thing and things, devices and assurances, conveyance and conveyances, in the law, whatsoever, for the better and more perfect assuring and conveying, settling, establishing, or confirmation, of the said messuage, farm, lands, tenements, hereditaments, and premises, hereby granted, or mentioned to be hereby granted, or any of them; and of every, or any part, or parcel thereof, with all and singular their, and every of their, appurtenances, unto the said B, his heirs and assigns, according to the true intent and meaning of these presents; be it by fine, or fines, feoffment or feoffments, deed or deeds, enrolled or not enrolled, common recovery or recoveries; And by all and every other ways and means, in the law, whatsoever, as by the said B, his heirs or assigns, or by his, their, or any of their, counsel, learned in the law, shall be reasonably devised, or advised, and required; so as the said farther assurances, to be made, or any of them, do not, nor shall, contain, any farther assurance, or warrant, than for enjoying them only against the parties thereunto, and their respective heirs; and touching acts and deeds, done and suffered by them, or any of

them; and so as, for the acknowledging and executing of such farther conveyances, and assurances, or any of them, the parties that shall be required to make, or execute the same, be not compelled, nor compellable, for the doing thereof, to travel farther, or elsewhere, than to _____.

— AND it is declared, concluded, and agreed, by, and between, No. X.
all, and every of, the said parties to these presents, That the fine, so as aforesaid to be levied, and all and every other fine, and fines, feoffment and feoffments, conveyances and assurances, in the law, whatsoever, heretofore had and executed, or hereafter to be had and executed, by and between the parties to these presents, or any of them, or by them or any of them, with any other person or persons, of the premises, or any part or parcel thereof; shall be, and enure, and shall be adjudged, deemed, and taken, to be and enure, to the only proper use and behoof of the said B, his heirs and assigns, and to and for no other use, intent, or purpose whatsoever.

Assurances to be to the use of the bargainee.

— AND the said A, for himself, his heirs, executors, and administrators, and for every of them, Doth covenant, and agree, to, and with, the said B, his heirs and assigns, and to and with every of them, by these presents, That he, the said A, hath not done, committed, executed, or suffered, any act or acts, thing or things, whatsoever, whereby the said messuage, farm, land, tenements, and premises, or any part thereof, now are, or at any time hereafter shall, or may be impeached, or encumbered, in title, charge, estate, or otherwise; (the conveyance and estate thereof, made and granted by him, the said A, to the said B, and his heirs, only excepted and fore-prized.)

No. XI.

Bargainer not to encumber.

Note, It is thought unnecessary to add any more Covenants, as those on the part of Releasees and Mortgagers, are given at length in the Releases and Mortgages.

D E F E A S A N C E.

** A Defeasance, of a Mortgage in Fee.*

THIS INDENTURE, made the — day of —, in the — year of the reign of our Sovereign, George the third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, &c. and in the year of our Lord —, between A of —, &c. of the one part, and B of —, &c. and Arabella his wife, and C of —, &c. of the other part. WHEREAS, by indentures of lease and release, the lease bearing date, the day next before, and the release bearing even date herewith, and both executed immediately before these presents, and made, or mentioned to be made, between the said B, and Arabella his wife, and C, of the one part, and the said A, of the other part; the said B, and Arabella his wife, (in consideration of the sum of —, to them paid by the said A,) and the said C, by the direction, and at the request of the said B, and Arabella his wife; and in consideration of five shillings to him paid by the said A, DID grant, bargain, and sell, release and confirm, unto the said A; ALL that —, &c. to hold, to, and to the use of, the said A, his heirs and assigns for ever: AND WHEREAS the said indentures of lease and release above-mentioned to be made to the said A, by the said B, and Arabella his wife, and C, were intended only as a security for his payment of the said sum of —, being the consideration-money therein-mentioned, and the interest thereof: NOW THIS INDENTURE WITNESSETH, and the true intent and meaning of the said indentures, and these presents, and of the parties to the same, was and is hereby declared to be, and the said A, doth hereby for himself, his heirs and assigns, covenant, grant, and agree, to and with the said B, and Arabella his wife, and the said C, their heirs, executors, and administrators, THAT if he, the said B, and

* See Observations on the several species of English Deeds, Sect. 28.

Arabella his wife, or either of them, their heirs, executors, or administrators, or any of them, do, and shall, well and truly pay, or cause to be paid, unto the said A, his heirs, or assigns, the full sum of ———, on the ——— day of ——— next ensuing, without any deduction or defalcation, for taxes, assessments, or any other impositions whatsoever; then, and in such case, he, the said A, his heirs, or assigns, and all, and every person or persons, claiming the said premises, in, by, or under, the said recited indentures of lease and release, or any part thereof, shall and will, at the request, cost, and charges of the said B, and Arabella his wife, or their heirs and assigns, transfer, assign, and set over, ALL and SINGULAR the said premises, together with the said indentures, unto the said B, and Arabella his wife, and C, and their heirs, or to whom they shall appoint, discharged of all encumbrances, by him or them, done or suffered: AND that, from and after full payment and discharge of the said sum of ———, and interest due thereon, and until such assignment be made, he, the said A, and his heirs, and all persons, standing or being seized of the premises, by, from, or under him, or them, shall be seized thereof, and of every part and parcel thereof, in TRUST, to, and for the sole use, benefit, and behoof, of the said B, and Arabella his wife, and C, their heirs and assigns, or some or one of them, and to and for no other use, intent, or purpose whatsoever: AND he, the said B, for himself, his heirs, executors, and administrators, doth covenant, promise, and agree, to, and with, the said A, his heirs and assigns, by these presents; That he, the said B, his heirs, executors, or administrators, or some or one of them, shall and will, well and truly pay, or cause to be paid, unto the said A, his heirs, or assigns, the said sum of ———, on the day before expressed for payment of the same; without any deductions, or abatements whatsoever, for taxes, charges, assessments, or for any other cause, matter, or thing whatsoever, according to the true intent and meaning of these presents: AND it is hereby declared, concluded, and agreed, by, and between, the said parties to these presents, That it shall and may be lawful for the said B, and Arabella his wife, and C, and their heirs, some or one of them, from time to time, and at all times hereafter, until default be made in payment of the said sum of ———, or any part thereof, at the day before limited, and appointed for payment of the same, to make any lease, demise, or grant, of all the said ———, *bona fide*; and that there be reserved upon the same, the best and most improved yearly

D E F E A S A N C E

95

rent, that such ———, can truly and *bona fide* be let for, and so as such yearly rent, so to be reserved, be payable, and be paid, unto the person or persons, that shall be seized of the reversion of the said premises, so leased, immediately expectant upon the same leases, so to be made: AND lastly, it is declared, concluded, and agreed, by, and between, all the said parties to these presents, That it shall, and may be lawful, to, and for, the said B, and Arabella his wife, and C, or some or one of them, to have, hold, occupy, and enjoy, the said ———, in and by the said recited indentures mentioned, and to receive and take the rents, issues, and profits, of the same, until default in payment of the said sum of ———, or any part thereof, at the day before-mentioned for payment of the same; without any let, trouble, or disturbance, of the said A, his heirs, or assigns, and without any account to him, them, or any of them, to be had or given for the same. IN WITNESS whereof, the said parties to these presents, have their hands and seals hereunto set, the day and year first above-written.

Signed, sealed, and delivered,
(being first duly stamped,)
in the presence of

D.
E.

A.



B.



Arabella A.



C.



CHAPTER 1

The first part of the book is devoted to a general survey of the subject. It begins with a discussion of the history of the subject, and then proceeds to a discussion of the present state of the subject. The author then discusses the various methods which have been used to study the subject, and finally discusses the results of the various studies which have been conducted.

(1)

(2)

(3)

(4)

1.1.1

2

E X C H A N G E.

** A Deed of Exchange, of Plantations or Tracts of Land, &c. in the West Indies.*

THIS INDENTURE, made the — day of —, in the year of our Lord —, between A of the city of —, in Scotland, Merchant, of the one part, and B of the said city, Merchant, of the other. WHEREAS the said A and B have contracted, and agreed, to give, and convey in exchange, each of them to the other, the plantations or tracts of land, sugar-works, and hereditaments, herein after-mentioned; NOW THIS INDENTURE WITNESSETH, That the said A, in pursuance and performance of his part of the said agreement, and for, and in consideration of, the sum of ten shillings, of lawful money of Great Britain, to him in hand paid, by the said B, at, or immediately before, the sealing and delivery of these presents, the receipt whereof is hereby acknowledged; HATH granted, released, and confirmed, (*or given, granted, and confirmed,*) and by these presents doth grant, release, and confirm, unto the said B, (in his actual possession now being, by virtue of a bargain and sale,† to him thereof made, by the said A, in consideration of five shillings, by indenture, bearing date the day next before the day of the date hereof, for one whole year, commencing, from the day next before the day of the date of the said indenture of bargain and sale, and by force of the statute made for transferring uses into possession,) and to his heirs and assigns, ALL that plantation or tract of land, and sugar-work, of him the said A, commonly called and known, by the name of — plantation, situated, lying, and being, in the parish of —, in the island of —, containing, by estimation, — acres, be the same more or less; howso-

* See Observations on the several species of English Deeds, Sect. 18, 19.

† For a Precedent of a Bargain and Sale, or Lease for a year, See the conveyances by Lease and Release.

ever the said plantation or tract of land is butted or bounded, and by whatsoever other name or names, the same, or part, or parcel thereof, are, or is, called, known, or distinguished; and all, and every, the mills, mill-houses, boiling-houses, still-houses, trash-houses, and all other the houses, out-houses, edifices, erections, and buildings whatsoever, on the said plantation or tract of land erected or built; and all ways, paths, passages, waters, water-courses, woods, under-woods, commons, and common of pasture, feedings, fishings, fishing-places, easements, privileges, profits, commodities, emoluments, advantages, hereditaments, and appurtenances, whatsoever, to the said plantation or tract of land, and sugar-work, belonging, or in any wise appertaining, or therewith, or to, or with any part, or parcel thereof, usually held, occupied, possessed, or enjoyed, or accepted, reputed, deemed, taken, or known, as part, parcel, or member thereof, or of any part thereof: AND also, all the estate, right, title, interest, use, trust, property, inheritance, possession, claim, and demand whatsoever, both at law and in equity, of him the said A, of, in, to, or out of, the said plantation or tract of land, and sugar-work, and other the premises, mentioned, or intended to be hereby granted, and released, and of every part and parcel thereof: **TO HAVE and to HOLD**, the said plantation or tract of land, and sugar-work, and all and singular other the premises, hereby granted, and released, or intended so to be, with their, and every of their, appurtenances, unto the said B, his heirs and assigns, to the only proper use, and behoof, of the said B, his heirs and assigns, for ever, **IN EXCHANGE**, for the plantation or tract of land, and sugar-work, &c. herein after-mentioned, and intended to be hereby conveyed, by the said B, to the said A, and his heirs. **AND THIS INDENTURE FARTHER WITNESSETH**, That the said B, in pursuance and performance of his part of the said agreement, and for, and in consideration of, the sum of ten shillings, of lawful money of Great Britain, to him in hand paid by the said A, at, or immediately before, the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, released, and confirmed, (*or given, granted, and confirmed,*) and by these presents doth grant, release, and confirm, unto the said A, (in his actual possession now being, by virtue of a bargain and sale, to him thereof made, by the said B, in consideration of five shillings, by indenture, bearing date the day next before the day of the date hereof, for one whole year, commencing from the day next before

the day of the date of the said indenture of bargain and sale, and by force of the statute made for transferring uses into possession,) and to his heirs, ALL that (*here describe the plantation, &c.*) TO HAVE and to HOLD the said plantation or tract of land, and sugar-work, and all and singular other the premises hereby granted and released, or intended so to be, with their, and every of their, appurtenances, unto the said A, his heirs and assigns, to the only proper use, and behoof, of the said A, his heirs and assigns, for ever, IN EXCHANGE, for the plantation or tract of land, and sugar-work, &c. herein before conveyed, by the said A, to the said B, and his heirs; AND the said A, for himself, his heirs, executors, and administrators, Doth hereby covenant, promise, grant, and agree, to and with the said B, his heirs and assigns, by these presents, in manner and form following; that is to say, THAT (*covenants from A to B, for peaceable enjoyment—that the premises are free from encumbrances—for farther assurance. See these covenants in conveyances by lease and release, No. 1.*) provided always, and it is hereby mutually agreed and declared by, and between, the parties to these presents, and it is the true intent and meaning of these presents, and of the said parties, that in case the said A, his heirs, or assigns, shall, at any time hereafter, be lawfully evicted, or put out of the possession of the plantation or tract of land, and sugar-work, &c. hereby granted and released, by the said B, as aforesaid, or any part thereof: that then, and in such case, it shall and may be lawful, to, and for, the said A, his heirs and assigns, to enter upon, and to repossess, and re-enjoy, the said plantation, &c. so hereby granted and released, and every part, and parcel thereof, in the same manner, as if these presents had never been made; this indenture, or any thing therein contained to the contrary thereof, in any wise notwithstanding: AND the said B, for himself, &c. (*the same covenants and proviso, on the part of B.*) IN WITNESS whereof, the said parties to these presents, have their hands and seals hereunto set, the day of the month, and year of our Lord, first before-written.

Proviso in case of eviction.

Signed, sealed, and delivered,
(being first duly stamped,)
in the presence of

} C.
D.

A.



B.



F E O F F M E N T.

* *A Deed of Feoffment.*

THIS INDENTURE, made the — day of —, in the year of our Lord —, between A of —, of the one part, and B of —, of the other part, WITNESSETH, That the said A, for, and in consideration of, the sum of —, of lawful money of Great Britain, to him in hand paid, by the said B, at, or immediately before, the sealing and delivery of these presents, the receipt whereof he, the said A, doth hereby acknowledge, and thereof doth acquit and discharge the said B, his heirs and assigns, for ever, by these presents, HATH granted, bargained, and sold, alienated, enfeoffed, released, and confirmed, and by these presents doth grant, bargain, and sell, release, alienate, and confirm, unto the said B, his heirs and assigns, for ever, ALL that —, To Habendum. HAVE and to HOLD, the said —, with the appurtenances, unto the said B, his heirs and assigns, to the only proper use, and behoof, of the said B, his heirs and assigns, for ever; (under the yearly rent of sixpence) and the said A, for himself, &c. (*covenants for quiet enjoyment, and for farther assurance. See covenants, No. 5, 9.*) AND LASTLY, the said A, hath made, ordained, constituted, and appointed, and by these presents doth make, &c. C of Letter of attorney to deliver Seizin. —, and D of —, jointly, and either of them, severally, his true and lawful attornies and attorney, for him, and in his name, into the said —, with the appurtenances hereby granted, or mentioned to be granted, or into some part thereof, in the name of the whole, to enter, and full and peaceable possession, and seizin thereof, for him, and in his name, to take, and have; and after such possession and seizin thereof, so taken and had, the like full and peaceable possession and seizin thereof, or of some part thereof, in the name of the whole, unto the said B, or his certain attorney or

* See Observations on the several species of English Deeds, Sect. 3, 4, 5.

F E O F F M E N T.

attornies, in that behalf, to give and deliver; TO HOLD to him the said B, his heirs and assigns, for ever, according to the true intent and meaning of these presents; ratifying and confirming, all and whatsoever his said attornies, or either of them, shall do in the premises. IN WITNESS whereof, the said parties to these presents have hereunto set their hands and seals, the — day of —, in the year of our Lord —.

Signed, sealed, and delivered,
(being first duly stamped,)
in the presence of

E.
F.

A.



B.



G I F T S.

* *A Deed of Gift of Lands.*

No. 1.

THIS INDENTURE, made the — day of —, in the year of our Lord —, between A of —, of the one part, and B of —, son of the said A, of the other part, WITNESSETH; That the said A, for, and in consideration of, the natural love and affection, which he hath, and bears, unto the said B, HATH given, granted, alienated, enfeoffed, and confirmed, and by these presents DOTH give, grant, alienate, enfeoff, and confirm, unto the said B, his heirs and assigns, ALL that —, and the reversion and reversions, remainder and remainders, rents and services, of all and singular the premises; And all the estate, right, title, interest, property, claim, and demand whatsoever, of him the said A, of, in, and to, the said —, with their, and every of their, appurtenances, and all deeds, evidences, and writings, touching or concerning the said premises, or any part, or parcel thereof: To HAVE and to HOLD, the said —, and all and singular the premises, hereby granted and conveyed, or mentioned, or intended to be granted and conveyed, with their appurtenances, unto the said B, his heirs and assigns, to the only proper use, and behoof of the said B, his heirs and assigns, for ever. AND the said A, for himself, his heirs, executors, and administrators, Doth covenant, promise, and grant, to, and with, the said B, his heirs and assigns, by these presents, That the said B, his heirs and assigns, shall, and lawfully may, from henceforth for ever, peaceably and quietly, have, hold, use, occupy, possess, and enjoy, the said —, with their, and every of their, appurtenances, clear and discharged, or well and sufficiently saved, and kept harmless, of, and from, all former and other gifts, grants, bargains, sales, jointures, feoffments, leases, dowers, estates, entails, rent-charges, arrearages of rents, statutes, judgments, recognizances, executions; and of, and from, all other titles, troubles, charges, and encumbrances, whatsoever, had, made, committed, done, and suffered, by him, the said A, his heirs, executors, or administrators, or any other person, or persons, law-

* See Observations on the several species of English Deeds, Sect. 11.

fully claiming, or to claim, by, from, or under, him, them, or any, or either of them. IN WITNESS whereof, the said parties to these presents have their hands and seals hereunto set, the day of the month, and year of our Lord, first before-written.

Signed, sealed, and delivered,
(being first duly stamped,) }
in the presence of

C.
D.

A.



B.



A Letter of Attorney should be granted to deliver Seizin. See a Precedent in the foregoing Deed of Feoffment.

No. II.

A Deed of Gift of a Personal Estate.

KNOW ALL MEN BY THESE PRESENTS, That I, A of ———, in consideration of the natural love, and affection, which I have, and bear, unto B my sister; AND also, for divers other good causes, and considerations, me, the said A, hereunto moving, have given, granted, and confirmed, and by these presents do give, grant, and confirm, unto the said B, ALL and SINGULAR my goods, chattels, plate, jewels, leases, and personal estate, whatsoever, in whose hands, custody, or possession, forever, they be, in the island of ———: To have, hold, and enjoy, all and singular the said goods, chattels, and personal estate aforesaid, unto the said B, her executors, administrators, and assigns, to the only proper use and behoof of the said B, her executors, administrators, and assigns, for ever. AND I, the said A, all and singular the said goods, chattels, personal estate, and other the premises, to the said B, her executors, administrators, and assigns, against me, the said A, my executors and administrators, and all and every other person and persons whomsoever, shall, and will, warrant, and for ever defend by these presents. IN WITNESS whereof, I have, &c.

A.

Sealed and delivered, (being
first duly stamped,) in the
presence of

C.
D.

G R A N T S.

* *A Grant of a Reversion.*

No. I.

THIS INDENTURE, made the — day of —, in the year of our Lord —, between A of —, of the one part, and B of —, of the other part, WITNESSETH; That for, and in consideration of, the sum of —, of lawful money of Great Britain, to the said A in hand paid, by the said B, at, or immediately before, the sealing and delivery of these presents, the receipt whereof the said A, doth hereby acknowledge, and thereof doth freely and clearly acquit, and discharge, the said B, HE, the said A, hath granted, bargained, and sold, and by these presents doth fully, clearly, and absolutely, grant, bargain, and sell, unto the said B, his heirs and assigns for ever, ALL that right, title, use, interest, reversion, and remainder, of him, the said A, of, and in, All and singular that messuage, &c. which said messuage, and other the premises, with the appurtenances, the said A, hath, should, or ought to have, by, and after, the decease of C, brother of the said A; AND which said messuages, &c. D of — deceased, father of the said C, by his last will and testament, devised, willed, and bequeathed, unto the said C, for, and during, the natural life of the said C; and the immediate reversion, or remainder thereof, to the said A, and his heirs for ever: Together with all deeds, evidences, charters, rescripts, writings, and muniments, which he, the said A, or any other to his use, or by his consent or delivery, have, or hath, touching, or concerning, the said messuage, &c. or any part thereof; ALL and singular which said deeds, evidences, charters, &c. the said A, hath already delivered to the said B, at, and

* See Observations on the several species of English Deeds, Sect. 12.

G R A N T S.

before, the sealing and delivery of these presents: **To HAVE** and **to HOLD** the said reversion, and remainder, and all estate, right, title, and interest, of the said A, of, in, and to, the said messuage, &c. before by these presents granted, bargained, and sold, or meant, mentioned, or intended, to be hereby granted, bargained, and sold, and every part thereof, immediately from and after the decease of the said C, unto the said B, his heirs and assigns for ever. **AND** the said A, for himself, &c. doth covenant, &c. **THAT** the said A, at the day of the date of these presents, is lawfully seized of, and in, the reversion, and remainder, of the said messuage, &c. immediately from and after the decease of the said C, of a true and perfect estate of inheritance, in the law, in fee, to his own use, without any manner of condition, mortgage, or redemption. **AND** farther, that the said reversion or remainder, of the said messuage, &c. from, by, and after, the decease of the said C, and at the day of the date hereof, are, and be, and so at all times from henceforth shall be, and continue, free, clear, and clearly, acquitted, exonerated, and discharged, and saved harmless, by the said A, his heirs, executors, and administrators, of and from all, and every former, and other bargains, sales, gifts, grants, leases, statutes-merchant, and of the staple, recognizances, jointures, dowers, wills, and rents; and of, and from all, and all manner of, encumbrance or demand whatsoever, had, made, committed, or done, by him, the said A, or any other person or persons, by his authority and procurement. **IN WITNESS** whereof, the said parties to these presents, have their hands and seals hereunto set, the day and year first before-written.

Signed, sealed, and delivered,
(being first duly stamped,)
in the presence of

E.
F.

A.



B.



A Grant of Rent-charge.

No. II.

THIS INDENTURE, made, &c. &c. between A of ———, of the one part, and B of ———, of the other part, WITNESSETH; That the said A, for, and in consideration of, the sum of ———, &c. (*as in the foregoing precedent,*) HATH given, granted, and confirmed, and by these presents doth give, grant, and confirm, unto the said B, one annuity, or yearly rent-charge, of ———, To be had, taken, and received, out of all and singular, the messuages, &c. of the said A, within the county of ———; to be paid at the four most usual feasts of the year, that is to say, ON the feast of Saint Michael the Archangel,—the birth of our Lord, Christ,—the annunciation of the blessed virgin, Mary,—and on the nativity of Saint John the Baptist, by even and equal portions; The first payment thereof, to begin and be made, on the ——— day of ——— next ensuing; The second, &c. &c. To have, hold, take, receive, and enjoy, the said annuity, or yearly rent-charge, unto the said B, his, &c. from the day of the date of these presents, until the full end and term of ———: AND if the said annuity, or yearly rent-charge, of ———, shall happen to be unpaid, in all, or in part, after any of the feast-days above-limited for the payment thereof, The said A, for himself, &c. DOTH covenant, &c. That then it shall and may be lawful, to and for the said B, his, &c. into all and singular the said messuages, &c. or into any part thereof, to enter, and distrain, both for the annuity aforesaid, and the arrearages thereof; (if any be,) and the distress and distresses, then and there found, and taken, to keep, and detain, until the said annuity, and all arrearages thereof, shall be fully satisfied, contented, and paid, unto the said B, his, &c. AND the said A, his, &c. shall and will, from time to time, and at all times, during the said term of ———, well and truly pay, or cause to be paid, to the said B, his, &c. or some of them, the said annuity, or yearly rent of ———, in manner and form aforesaid, according to the true intent and meaning of these presents. IN WITNESS WHEREOF, &c.

Signed, sealed, and }
delivered, &c. }

No. III.

A Grant of an Annuity by Deed-poll.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A of ———, sends greeting. KNOW YE, That the said A, for divers good causes and considerations, him hereunto moving, HATH given, granted, and confirmed, and by these presents, DOTH give, grant, and confirm, unto B of ———, in the county of ———, one annuity, or annual rent, of ——— pounds, of lawful money of Great Britain, to be well and truly paid unto the said B, and his assigns, from, and immediately after, the decease of the said A, out of all and singular the messuages, lands, and tenements, with their, and every of their, appurtenances, situated, lying, and being, in ———, late in the possession of ———, called or known by the name of ———: To HAVE and to HOLD, receive, perceive, and take, the said annuity, or yearly rent, of ——— pounds, to him, the said B, and his assigns, from, and immediately after, the death of the said A, for and during the term of ——— years, if he, the said B, shall so long live; the same to be had, taken, received, and paid to him, the said B, and his assigns, at the feasts of ———, and ———, &c. by even and equal portions; The first payment thereof, to begin and commence, from such of the said feasts as shall happen next after the decease of the said A: AND if it shall happen that the said annuity, or annual rent, of ———, or any part thereof, be behind and unpaid, in part or in whole, at any of the said feast-days, at which it ought to be paid as aforesaid, being lawfully demanded, That then, and so often, it shall and may be lawful to, and for, the said B, and his assigns, into any of the said messuages, &c. or into any part, or parcel thereof, to enter and distrain, for the said annuity of ——— pounds, or such part thereof, as shall so happen to be behind, in arrear, or unpaid; And the distress or distresses, there found, to take, drive, lead, or carry away, and to detain, hold, and keep, until the said B, the said annuity, or yearly rent of ——— pounds, with the arrearages thereof, if any such there be, shall be fully paid and satisfied: PROVIDED NEVERTHELESS, and upon condition, That if the said A, shall, at any time during his natural life, pay, or tender unto the said B, or to any other person or persons, the sum of ———, or more,

Power of distress.

Proviso of revocation.

G R A N T S.

209

of lawful money of Great Britain, with intent, and on purpose, to revoke, frustrate, or make void, the said annual-rent, or the grant thereof, That then, and from thenceforth, this present deed, and all, and every, the gift, grant, and limitation, of the rent aforesaid, and the said annual, or yearly rent, so by these presents given, granted, or mentioned to be granted, shall cease and be void, and of no farther force and effect, any thing in these presents contained to the contrary, notwithstanding. IN WITNESS, &c.

Signed, sealed, and }
delivered, &c. }

THE HISTORY OF THE

... of the ...
... of the ...
... of the ...

... of the ...
... of the ...
... of the ...

... of the ...
... of the ...
... of the ...

... of the ...
... of the ...
... of the ...

... of the ...
... of the ...
... of the ...

... of the ...
... of the ...
... of the ...

... of the ...
... of the ...
... of the ...

... of the ...
... of the ...
... of the ...

... of the ...
... of the ...
... of the ...

... of the ...
... of the ...
... of the ...

... of the ...
... of the ...
... of the ...

LEASE AND RELEASE.

A Conveyance, by Lease and Release, of two Plantations, Sugar-works, and Negroes.*

No. I.

Lease for a year, to precede the Release.

THIS INDENTURE, made the — day of —, in the — year of the reign of our Sovereign, George the third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, &c. and in the year of our Lord —, between A, of the city of —, and county of —, in that part of the kingdom of Great Britain, called Scotland, Merchant, of the one part, and B and C, of the said city, and kingdom aforesaid, Merchants, of the other part, WITNESSETH; That the said A, for, and in consideration of, the sum of five shillings, of lawful money of Great Britain, to him in hand paid, by the said B and C, the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents doth bargain and sell, unto the said B and C, their executors, administrators, and assigns, ALL that plantation, and sugar-work, of him the said A, commonly called, and known by the name of, —, and the lands thereof, situated, lying, and being, in the parish of —, in the island of —, containing, by estimation, — acres: (be the same more or less,) AND also, all that other plantation, and sugar-work, of him the said A, commonly called, and known by the name of, —, and the lands thereof, situated, lying, and being, in the parish of —, and island of —, containing, by estimation, — acres; (be

* See Observations on the several species of English Deeds, Sect. 43.

the same more or less,) howsoever the said two several plantations, and lands, are respectively 'butted, or bounded, and by whatsoever other name, or names, the same, or any part or parcel thereof, are, or is called, known, or distinguished: AND all, and every, the mills, mill-houses, boiling-houses, curing-houses, still-houses, trash-houses, and all other the houses, out-houses, edifices, erections, and buildings whatsoever, on the said two several plantations, and lands respectively, or any part thereof, erected, or built: AND all ways, paths, passages, waters, water-courses, woods, under-woods, commons, and common of pasture, feedings, fishings, fishing-places, easements, privileges, profits, commodities, emoluments, advantages, hereditaments, and appurtenances whatsoever, to the said two several plantations, and sugar-works, respectively, or either of them, belonging, or in any wise appertaining, or therewith, or to, or with, any part, or parcel thereof, usually held, occupied, possessed, or enjoyed, or accepted, reputed, deemed, taken, or known, as part, parcel, or member thereof, or of any part thereof: AND also, all, and every, the negro, and other slaves, upon, and belonging to, the said two several plantations, and sugar-works, respectively, or either of them; together, with the future issue, offspring, and encrease, of the females, of the said slaves, respectively; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part and parcel thereof, **TO HAVE and to HOLD** the said two several plantations, and sugar-works, lands, tenements, slaves, hereditaments, and premises, hereby bargained and sold, with their, and every of their, issue, and encrease, rights, members, and appurtenances, unto the said B and C, their executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during, and until, the full end, and term, of one whole year from thence next ensuing, and fully to be completed and ended; **YIELDING**, and paying therefore, at the end of the said term, the rent of one pepper-corn, if the same shall be lawfully demanded; **TO the intent**, that by virtue of these presents, and of the statute made for transferring uses into possession, they, the said B and C, may be in the actual possession of the said two several plantations, and sugar-works, lands, tenements, slaves, hereditaments, and premises, mentioned and intended to be hereby bargained and sold, with their, and every of their, issue and appurtenances; and thereby be enabled to accept, and take a grant, and release of the reversion and inheritance thereof, to them, their heirs, and assigns, in such

Habendum.

Reddendum.

LEASE AND RELEASE.

113

fort, manner, and form, as shall be declared in an indenture of release, intended to bear date, the day next after the day of the date hereof, and to be made between the same parties, as are parties hereto. IN WITNESS whereof, the parties aforesaid to these presents, their hands and seals have hereunto set, the day and year first above-written.

Signed, sealed, and delivered,
(being first duly stamped,) }
in the presence of

D.
E.

A.



B.



C.



Release.

No. I.

THIS INDENTURE, made, &c. &c. (*as in the lease*)
WITNESSETH; That for, and in consideration of, the sum of Consideration
—, of lawful money of Great Britain, to the said A, in hand
well and truly paid, by the said B and C, or one of them, at, or
immediately before, the sealing and delivering of these presents, the
receipt whereof, the said A doth hereby acknowledge, and thereof,
and therefrom, and of, and from, every part, and parcel thereof,
doth acquit, release, exonerate, and discharge, the said B and C,
their heirs, executors, and administrators, and every of them, for
ever, by these presents, HE, the said A, hath granted, bargained,
sold, alienated, enfeoffed, released, and confirmed, and by these
presents doth grant, bargain, sell, alienate, enfeoff, release, and
confirm, unto the said B and C, (in their actual possession now being,
by virtue of a bargain and sale to them thereof made, by the said A,
in consideration of five shillings, by indenture, bearing date the day
next before the day of the date of these presents, for one whole year,
commencing, from the day next before the date of the said inden-
ture of bargain and sale, and by force of the statute made for trans-

ferring uses into possession,) and to their heirs and assigns, ALL that plantation, &c. (*as in the lease to the habendum,*) AND also, ALL and every, the mules, steers, neat, cattle, and other live-stock, now upon, and belonging to, the said two several plantations and sugar-works, respectively, or either of them; AND all coppers, stills, worms, worm-tubs, ladles, skimmers, drips, pots, pans, wains, waggons, carts, carriages, plantation-utensils, and implements of planting, upon, and belonging to, the said two several plantations and sugar-works, respectively, or to either of them; AND also, all the estate, right, title, interest, use, trust, property, inheritance, possession, claim, and demand, whatsoever, both at law, and in equity of him the said A, of, in, to, or out of, the said two several plantations and sugar-works, respectively, lands, tenements, slaves, hereditaments, mules, steers, cattle, stock, utensils, and other the premises, mentioned, or intended, to be hereby granted and released, and of every part and parcel thereof; AND all deeds, evidences, letters-patent, muniments, and writings, touching or concerning the said premises, or any part or parcel thereof; TO HAVE and to HOLD, so much, and such part or parts, of the said two several plantations and sugar-works, lands, tenements, slaves, hereditaments, mules, steers, cattle, stock, utensils, and all and singular other the premises, hereby granted, and released, or intended so to be, as is, or are, of the nature of FREEHOLD or real estate, with their, and every of their, issue and encrease, rights, members, and appurtenances, unto the said B and C, their heirs and assigns, to the only proper use and behoof of the said B and C, their heirs and assigns, for ever; AND to HAVE and to HOLD, so much, and such part or parts thereof, as is, or are, of the nature of CHATTEL-INTEREST or personal-estate, unto, and to the use of the said B and C, their executors, administrators, and assigns. AND the said A, for himself, his heirs, executors, administrators, and assigns, Doth hereby covenant, promise, and agree, to and with the said B and C, their heirs, executors, administrators, and assigns, That he, the said A, now is the true, lawful, and rightful owner, of the said two several plantations and sugar-works, lands, tenements, slaves, hereditaments, mules, steers, cattle, stock, utensils, and premises above-mentioned; AND also, that he, the said A, at the time of sealing and delivering these presents, is lawfully and rightfully seized, in his own right, of a good, sure, perfect, absolute, and indefeasible estate of inheritance in fee simple, in possession, of all and singular the premises

Habendum.

Covenants
That the re-
leaser is true
owner.

And is law-
fully seized.

above-mentioned, or of such of them, as is, or are, of the nature of FREEHOLD or real estate; AND of a good and indefeasible estate, to him, the said A, his executors, administrators, and assigns, of such of them, as is, or are, of the nature of CHATTEL-INTEREST or personal-estate, without any manner of condition, mortgage, reversion, remainder, trust, limitation of use, or uses, power of revocation, or other matter, cause, or thing, whatsoever, to alter, change, charge, defeat, determine, make void, or in any manner to encumber the same: AND ALSO, That he, the said A, hath in himself, at the time of sealing and delivering of these presents, good right, full power, and lawful and absolute authority, to grant, bargain, sell, release, and confirm, the said two several plantations and sugar-works, lands, tenements, slaves, hereditaments, mules, steers, cattle, stock, utensils, and premises above-mentioned, and every part and parcel thereof, with their, and every of their, issue and increase, rights, members, and appurtenances, unto, and to the use of, the said B and C, their heirs, executors, administrators, and assigns, for ever, according to the purport, true intent, and meaning of these presents; AND ALSO, That they, the said B and C, their heirs, executors, administrators, and assigns, shall, and may, from time to time, and at all times hereafter, peaceably and quietly, have, hold, occupy, possess, and enjoy, the said two several plantations and sugar-works, lands, tenements, slaves, hereditaments, mules, steers, cattle, stock, utensils, and premises above-mentioned; AND to have, receive, and take, the rents, issues, profits, and produce thereof, and of every part and parcel thereof, for their own proper use and benefit, without the let, suit, hinderance, trouble, denial, execution, molestation, or interruption, whatsoever, of, from, or by, the said A, his heirs, or assigns, or of, or by, any other person or persons whomsoever; And THAT, free and clear, and freely and clearly, acquitted, exonerated, and discharged, or otherwise, by the said A, his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against, all, and all manner of, former and other gifts, grants, bargains, sales, leases, mortgages, jointures, dowers, right and title of dower, uses, trusts, wills, entails, statutes, recognizances, judgments, executions, extents, rents, arrears of rent, and all other titles, charges, and encumbrances, whatsoever, had, made, committed, done, or suffered, by the said A, or any other person or persons whomsoever, claiming, or to claim, by, from, or under him, them, or any of them: AND FARTHER,

And hath power to convey.

For peaceable enjoyment.

Free from encumbrances.

For farther
assurance.

Assurances to
be to the use
of the releasee.

That he, the said A, and his heirs, and all and every other person and persons, and his, and their heirs, having, or lawfully claiming, or who shall, or may have, or lawfully claim, any right, title, or interest, of, in, to, or out of, the said two several plantations and sugar-works, lands, tenements, slaves, hereditaments, mules, steers, cattle, stock, utensils, and premises, hereby granted and released, or intended so to be, or any of them, or any part thereof, by, from, or under, or in trust for them, or any of them, shall, and will, from time to time, and at all times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said B and C, their heirs, executors, administrators, or assigns, make, acknowledge, levy, suffer, and execute, or cause, or procure, to be made, done, acknowledged, levied, suffered, and executed, all, and such farther, and other, lawful and reasonable, act and acts, thing and things, devices, conveyances, and assurances, in the law, whatsoever, for the farther, better, more perfect, and absolute, granting, conveying, assuring, ratifying, and confirming, all and singular the said premises above-mentioned, with their, and every of their, issue and appurtenances, unto, and to the use of, the said B and C, their heirs, executors, administrators, and assigns, for ever, according to the nature and quality of the same premises, respectively, as by the said B and C, their heirs, executors, administrators, or assigns, or their, or any of their, counsel, learned in the law, shall be reasonably advised, devised, and required: AND lastly, it is covenanted, granted, concluded and agreed, by and between the said parties to these presents, That all, and every, the assurance and assurances, conveyance and conveyances, in the law, whatsoever, already made, done, acknowledged, and executed, or at any time hereafter to be made, done, acknowledged, and executed, by, or between, the said parties to these presents, or either of them, or any other person or persons whomsoever, of all and singular the premises above-mentioned, or any part or parcel thereof, with the appurtenances, shall be, and enure, and shall be adjudged, deemed, and taken, to be, and enure, as, for, and concerning, all and singular the premises above-mentioned, with the appurtenances, to, and for, the only proper use and behoof of the said B and C, their heirs, executors, administrators, and assigns, for ever, according to the purport, true intent, and meaning, of these presents, and to and for no other use, intent, or purpose whatsoever. IN WITNESS whereof, &c. &c. (*as in the lease.*)

*A Conveyance, by Lease and Release, by a Husband and
Wife, of a Plantation, Sugar-work, and Negros,
in Trust, to be Sold for the benefit of the Granters.** No. 11.

Lease for a year.

THIS INDENTURE, made the — day of —, in the — year of the reign of our Sovereign, George the third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, &c. and in the year of our Lord —, between A, of the city of —, and county of —, in that part of the kingdom of Great Britain, called Scotland, Merchant, and Emilia his wife, heretofore (*or formerly*) Emilia P, of the one part, and B of the island of —, in the West Indies, Esquire, of the other part, WITNESSETH; That as well for, and in consideration of, the sum of five shillings, of lawful money of Great Britain, paid by the said B, to the said A, and Emilia his wife, at, or immediately before, the sealing and delivering of these presents, the receipt whereof is hereby acknowledged; AS ALSO, for divers other good causes and considerations, They, the said A, and Emilia his wife, HAVE, and each of them HATH, bargained and sold, and by these presents DO, and each of them DOTH, bargain and sell, to the said B, his executors, administrators, and assigns, ALL that plantation and sugar-work, of them the said A, and Emilia his wife, in right of her, the said Emilia, commonly called and known by the name of —, situated, lying, and being, in the parish of —, in the island of — aforesaid, containing, by estimation, — acres; (be the same more or less,) howsoever the said plantation is abutted or bounded, and by whatsoever other name, the same, or part or parcel thereof, is, or are,

* Such Conveyances may also be made by an Attorney, See Letters of Attorney, No. 7.

called, known, or distinguished: AND all, and every, the mills, mill-houses, boiling-houses, curing-houses, still-houses, trash-houses, and all other the houses, out-houses, edifices, erections, and buildings, whatsoever, on the said plantation and lands, or any part thereof, erected or built; AND all ways, paths, passages, waters, water-courses, woods, under-woods, commons, and common of pasture, feedings, fishings, and fishing-places, easements, privileges, profits, commodities, emoluments, advantages, hereditaments, and appurtenances, whatsoever, to the said plantation and sugar-work, in any wise appertaining, or therewith, or to, or with any part or parcel thereof, usually held, occupied, possessed, or enjoyed, or accepted, reputed, deemed, taken, or known, as part, parcel, or member thereof, or of any part thereof: AND also, all those twenty negro, and other slaves, upon, and belonging to, the said plantation and sugar-work, that is to say, Twelve men-slaves, called and known by their several names of ———, ———, ———, &c. two negro-boys, called and known by the names of ———, and ———, and six female-slaves, called and known by their several names of ———, ———, &c. together with the future issue, offspring, and encrease, of the said female-slaves respectively; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part, and parcel thereof: To

Habendum. HAVE and to HOLD, the said plantation and sugar-work, lands, tenements, slaves, hereditaments, and premises, hereby bargained and sold, with their, and every of their, issue and encrease, rights, members, and appurtenances, unto the said B, his executors, administrators, and assigns, from the day next before the day of the date of these presents, for, and during, and until, the full end and term, of one whole year from thence next ensuing, and fully to be completed and ended; YIELDING, and paying, therefore, at the end

Reddendum. of the said term, the rent of one pepper-corn, if the same shall be lawfully demanded; TO the intent, that by virtue of these presents, and of the statute made for transferring uses into possession, he, the said B, may be in the actual possession of the said plantation and sugar-work, lands, tenements, slaves, hereditaments, and premises mentioned, and intended, to be hereby bargained and sold, with their, and every of their, issue, and appurtenances, and thereby be enabled to accept and take, a grant and release, of the reversion, and inheritance thereof, to him, his heirs, and assigns, in such sort, manner, and form, as shall be declared in an indenture of release,

LEASE AND RELEASE.

119

intended to bear date the day next after the day of the date hereof, and to be made between the same parties, as are parties hereto. IN WITNESS whereof, the parties aforesaid to these presents, their hands and seals have hereunto set, the day and year first above-written.

Signed, sealed, and delivered,
(being first duly stamped,)
in the presence of

F.
G.

A.



Emilia A.



B.



Release.

No. II.

THIS INDENTURE, made, &c. between, &c. (*as in the lease,*) WITNESSETH; That as well for, and in consideration of, the sum of ten shillings, of lawful money of Great Britain, by the said B, to the said A, and Emilia his wife, in hand, well and truly paid, at, or before, the sealing and delivering of these presents, the receipt whereof is hereby acknowledged; AS ALSO, for divers other good causes and considerations, They the said A, and Emilia his wife, HAVE, and each of them HATH, granted, bargained, sold, alienated, enfeoffed, released, and confirmed, and by these presents do, and each of them doth, grant, bargain, sell, alienate, enfeoff, release, and confirm, to the said B, (in his actual possession and seizin now being, by virtue of a bargain and sale, &c. *as in the preceding release,*) and to his heirs and assigns, ALL that plantation and sugar-work, of them, the said A, and Emilia his wife, in right of her the said Emilia, commonly called, &c. &c. And all, and every, the mills, mill-houses, &c. &c. reputed, deemed, taken, or known, as part,

LEASE AND RELEASE.

parcel, or member thereof; AND also, all those twenty negro and other slaves, &c. &c. and the reversion and reversions, &c. (*as in the lease, to the habendum,*) AND ALSO, all, and every, the mules, steers, neat, cattle, and other live-stock, now upon, and belonging to, the said plantation and sugar-work; AND all coppers, stills, worms, worm-tubs, ladles, skimmers, drips, pots, pans, wains, wag-gons, carts, carriages, plantation-utenfils, and implements of planting, upon, and belonging to, the said plantation and sugar-work; and all the estate, right, title, interest, use, trust, property, inheritance, possession, claim, and demand, whatsoever, both at law, and in equity, of them, the said A, and Emilia his wife, or either of them, of, in, to, or out of, the said plantation and sugar-work, lands, tenements, slaves, hereditaments, mules, steers, cattle, stock, utenfils, and other the premises, mentioned, or intended to be hereby granted and released, and of every part and parcel thereof; AND all deeds, evidences, letters-patent, muniments, and writings, touching, or concerning, the said premises, or any part, or parcel thereof: To HAVE and to HOLD, so much, and such part or parts, of the said plantation and sugar-work, lands, tenements, slaves, hereditaments, mules, steers, cattle, stock, utenfils, and all and singular other the premises, hereby granted and released, or intended so to be, as is, or are, of the nature of FREEHOLD or real estate, with their, and every of their, issue and encrease, rights, members, and appurtenances, unto the said B, his heirs and assigns, to the only proper use and behoof of the said B, his heirs and assigns, for ever. AND to HAVE and to HOLD, so much, and such part or parts thereof, as is, or are, of the nature of CHATTEL-INTEREST or personal-estate, unto, and to the use of, the said B, his executors, administrators, and assigns; IN TRUST nevertheless, That he, the said B, shall, and do, with all convenient speed, sell, and dispose of, the aforesaid plantation and sugar-work, lands, tenements, slaves, hereditaments, mules, steers, cattle, stock, utenfils, and all, and singular, other the premises, hereby granted and released, or intended so to be, to such person or persons, and to, and for, such reasonable rates and prices, as he, or they, shall think fit; AND that he, the said B, his heirs or assigns, shall, and do, pay over the monies which shall arise by such sale, or sales, as, and when, the same shall be made and perfected, to the said A, his executors, administrators, or assigns, to, and for, his, and their, sole and only

Habendum in
fee.

In trust.

proper use and benefit, or as he, or they, shall order, direct, or appoint: AND the said A, for himself, and for the said Emilia his wife, and for his heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the said B, his heirs and assigns, in manner following; that is to say, That they the said A, and Emilia his wife, or the one of them, now is, or are, lawfully and rightfully seized, of, and in, the said plantation and sugar-work, lands, tenements, slaves, hereditaments, mules, steers, cattle, stock, utensils, and premises, or such of them as is, or are, of the nature of FREEHOLD or real estate, of a good, sure, perfect, absolute, and indefeasible estate of inheritance, in fee simple, in possession; and of such of them, as is, or are, of the nature of CHATTEL-INTEREST or personal-estate, of a good and indefeasible estate to him the said A, his executors, administrators, and assigns; AND have in themselves, both, or one of them, good right, full power, and lawful and absolute authority, to grant, release, and convey the same, to, and to the use of, the said B, or his heirs and assigns, IN TRUST as aforesaid: AND farther, that the purchaser or purchasers, of the aforesaid plantation and sugar-work, lands, tenements, slaves, hereditaments, mules, steers, cattle, stock, utensils, and premises, or any of them, shall not be answerable or accountable, to the said A, and Emilia his wife, or to either of them, or to their, or either of their, heirs, executors, administrators, or assigns, for them, on application or misapplication, of all, or any part of, the purchase-money; but that the receipt of the said B, his heirs or assigns, for the same, shall be a sufficient discharge to such purchaser or purchasers, respectively; and that, from and after payment of the purchase-money to the said B, his heirs or assigns, such purchaser or purchasers, and his, her, and their heirs and assigns, respectively, shall and may hold, and enjoy, the plantation and sugar-work, lands, tenements, slave or slaves, mules, steers, cattle, stock, and utensils, by them respectively purchased, to and for his, her, and their own use and benefit, freed and discharged of, and from, all, and all manner of, encumbrances whatsoever, and without any farther or other conveyance, or assurance, to be made thereof by the said A, and Emilia his wife, or either of them, their, or either of their, heirs or assigns, in any manner whatsoever: AND it is hereby mutually agreed, by and between the said parties, that it shall and may be lawful, to and for the said B, his heirs and assigns, out of the money which shall come to his, or their hands,

Covenants
That the re-
leasers are law-
fully seized.

Have power
to convey.

That the pur-
chaser shall
not be answer-
able for the
application of
the price.

LEASE AND RELEASE.

under, and by virtue of, the trust aforesaid, to retain all such costs, charges, and expences, as he or they, shall or may, pay, bear, or sustain, or be put to, for, or by reason of, the trust aforesaid, or any wife relating thereto. IN WITNESS, &c.

Signed, sealed, and }
delivered, &c. }

Note, This Deed must be acknowledged before the chief Magistrate, &c. See Observations on the essential requisites of English Deeds, Sect. 26.

No. III.

*A Conveyance by Lease and Release, by a Husband and Wife, with a Covenant to levy a Fine, to bar the right of Dower.**

† THIS INDENTURE, made the — day of —, &c. between A of —, and B his wife, of the one part, and C of —, of the other part, WITNESSETH; That for, and in consideration of, the sum of —, of lawful money of Great Britain, to the said A in hand well and truly paid by the said C, at, or immediately before, the sealing and delivering of these presents, the receipt whereof the said A doth hereby acknowledge, and thereof, and therefrom, and of, and from, every part and parcel thereof, doth acquit, exonerate, and for ever discharge the said C, his heirs and assigns, by these presents, HE the said A, HATH granted, bargained, sold, alienated, enfeoffed, released, and confirmed, and by these presents DOTH grant, bargain, sell, alienate, enfeoff, release, and confirm, unto the said C, (in his actual

* See Observations on Alienation by matter of Record, Sect. 20, &c.

† See No. 1. and 2. for a form of a Lease for a year.

possession now being, &c. &c. *as in the foregoing precedents,*) and to his heirs and assigns for ever; ALL that ———, containing, by estimation, ——— acres, (be the same more or less,) situated, lying, and being, &c. and all paths, passages, waters, water-courses, woods, under-woods, commons, and common of pasture, easements, profits, hedges, ditches, mounds, fences, commodities, emoluments, hereditaments, and appurtenances whatsoever, therewith, or with any part or parcel thereof, usually held, occupied, and enjoyed, or reputed, deemed, taken, or known, to be part, parcel, or member thereof, or of any part thereof; and the reversion and reversions, &c. AND all the estate, title, interest, &c. Together with all deeds, evidences, writings, &c. TO HAVE and to HOLD, the said ———, and premises, herein before granted and released, or intended so to be, with their, and every of their, rights, members, and appurtenances, unto the said C, his heirs and assigns for ever, to the only proper use and behoof of the said C, his heirs and assigns for ever: AND the said A, for himself, his heirs, executors, and administrators, and for the said B his wife, doth covenant, promise and agree, to and with the said C, his heirs and assigns, by these presents, That he the said A, and B his wife, shall, and will, at the proper cost and charges of the said C, his heirs and assigns, before the end of Trinity-term next, acknowledge and levy, before his Majesty's Justices of the court of Common Pleas at Westminster, unto the said C, and his heirs and assigns, one or more fine or fines, *sur cognizance de droit, come ceo, &c.* with proclamations thereupon to be had and made, according to the form of the statute in that case made and provided, of ALL that ———, herein before-mentioned, or intended to be hereby released and confirmed, with their appurtenances; by such apt and proper names, descriptions, qualities, quantities, or other certainties, as shall be thought requisite or needful to be had in that behalf; WHICH said fine or fines, so as aforesaid, or in any other manner to be had and levied, shall be and enure, and shall be construed, adjudged, deemed, and taken, and is and are hereby declared, by and between all the said parties to these presents, to be and enure, to the only proper use and behoof of the said C, his heirs and assigns for ever, and to and for no other use, intent, or purpose, whatsoever. AND the said A for himself, his heirs, executors, and administrators, doth farther covenant, promise, and agree, to and with the said C, his heirs and assigns, by these presents, in manner and form following; that is to

Habendum.

Covenant to
levy a fine.To the use of
the cognizee.Covenants
That the re-
leaser is seized
in an estate of
fee-simple.

say, That he the said A, now is lawfully and rightfully seized of the said ———, with the appurtenances, of a good, pure, absolute, and indefeasible estate of inheritance, in fee-simple, without any manner of condition, limitation of use, or uses, or other matter or thing, to alter, change, charge, or defeat the same; AND that he now hath in himself, good right, and lawful authority, to bargain, sell, release, and confirm the same, and every part and parcel thereof, with their appurtenances, unto the said C, his heirs and assigns, in manner and form aforesaid: AND also, that the said ———, with their appurtenances, now are, and be, and from henceforth, from time to time, and at all times hereafter, shall be, remain, and continue, unto the said C, his heirs and assigns, free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise by him the said A, his heirs, executors, or administrators, well and sufficiently saved, kept harmless, and indemnified, of, from, and against, all, and all manner of, former gifts, grants, bargains, sales, leases, jointures, dowers, mortgages, recognizances, statutes, judgments, extents, titles, troubles, charges, or encumbrances whatsoever, had, made, committed, done, or willingly or wittingly suffered, by him the said A, or any other person or persons, lawfully claiming, or to claim, by, from, or under him, or by, or with, his act, means, consent, neglect, default, privity, or procurement: AND lastly, that he the said A, his heirs, executors, and administrators, and the said B his wife, and all and every other person and persons, lawfully claiming, or to claim, any estate, right, title, interest, benefit, or demand, of, in, to, or out of, the said ———, or any part or parcel thereof, by, from, or under him, or otherwise howsoever, shall and will, from time to time, and at all times hereafter, at the reasonable request, costs, and charges in the law, of the said C, his heirs or assigns, make, do, acknowledge, levy, suffer, and execute, or cause, or procure to be made, done, acknowledged, levied, suffered, and executed, all, and every such farther and other, lawful and reasonable, act and acts, thing and things, deed and deeds, conveyances and assurances in the law whatsoever, for the farther, better, and more perfect assuring the said ———, with their, and every of their, appurtenances, unto the said C, his heirs and assigns for ever, as by the said C, his heirs or assigns, or his or their counsel, learned in the law, shall be reasonably devised, advised, and required. IN WITNESS whereof, &c.

And has power to convey.

Free from encumbrances.

For farther assurance.

*Indentures of Lease and Release, for levying a Fine,
and suffering a Recovery.*

No. IV.

** Release.*

THIS INDENTURE, quadrupartite, made, &c. between A of ———, &c. and B his wife, lately one of the four, and now one of the two, nieces of C, deceased, late of ———, &c. of the first part, D of ———, &c. of the second part, E of ———, &c. of the third part, and F of ———, spinster, of the fourth part. WHEREAS, by the last will and testament of the said C, she the said B, became entitled to one fourth part of the lands, &c. herein after-mentioned, for the term of her life, with remainder to her first born, and other sons, in tail, with other remainders over; and by virtue of the said will, and in consequence of the death of G, late wife of the said D, without issue, she the said B, is become entitled to an eighth part, or a moiety of a fourth part, of the said lands, &c. to the use of the said B, and the heirs of her body, with remainders over; AND WHEREAS by certain indentures, bearing date the day next before the day of the date of these presents, the said A, and B his wife, HAVE granted and demised to the said F, the lands, &c. herein after-mentioned to be hereby granted and released, TO HOLD unto the said F, her executors and assigns, from the day next before the day of the date thereof, for the term of one thousand years, at the yearly rent of a pepper-corn, with a proviso for redemption of the same, as in the same indenture is mentioned; NOW THIS INDENTURE WITNESSETH; That for, and in consideration of, the sum of five shillings, of lawful money of Great Britain, to each of them the said A, and B his wife, in hand well and truly paid by the said D, at, or immediately before, the sealing and delivering of these presents, the receipt whereof the said A, and B his wife, do hereby acknowledge; And for barring,

* See No. 1. and 2. for a form of a Lease.

Fines.

docking, and destroying, all estates-tail, remainders, and reversions, thereon depending, of, and in, all and singular the lands, &c. herein after-mentioned, to be hereby granted and released; And for strengthening, corroborating, and confirming, the before-recited term of one thousand years; And for settling and assuring the said lands, &c. to and for such use and uses, estate and estates, intents and purposes, as is and are herein after-mentioned, expressed, and declared, of and concerning the same; THEY, the said A, and B his wife, HAVE, and each of them HATH, granted, bargained, sold, released, and confirmed, and by these presents DO, and each of them DOTH, grant, &c. unto the said D, (in his actual possession now being, &c.) and to his heirs, ALL that moiety or half part of them the said A, and B his wife, in right of her the said B, of, and in, one full fourth part, or share, of, and in, all that ———, &c. TO HAVE and TO HOLD the said several and respective parts and shares, of the said ———, and all other the premises, by these presents granted and released, or mentioned, or intended, so to be, and every part or parcel thereof, with their, and every of their, appurtenances, unto the said D, his heirs and assigns, to the use and behoof of the said D, his heirs and assigns; TO the INTENT and PURPOSE, That, as well by virtue of these presents, as of the fines agreed to be levied, as herein after is mentioned, the said D, may become a good and perfect tenant, of the immediate freehold and inheritance, of all and singular the before-mentioned premises, against whom common recoveries may be had, executed, and perfected, as herein after is mentioned; AND for the better and farther conveying and assuring the said several and respective parts and shares, of the said ———, unto the said D, and his heirs, for the same intent and purpose as aforesaid; IT is hereby agreed, by and between all the said parties to these presents, That the said A, and B his wife, shall, and will, before the end of Easter term, next ensuing the day of the date of these presents, or as soon after as may be, in due form of law, acknowledge and levy fines *sur cognizance de droit, come ceo, &c.* before his Majesty's Justices of the court of Common Pleas at Westminster, with proclamations as accustomed, unto the said D, and his heirs, of the said hereby granted and released, or mentioned to be hereby granted and released, premises, by such apt, and convenient, name and names, quantities, qualities, descriptions, and number of messuages, lands, and things, as by the said D, his heirs or assigns, or his or their counsel, learned in the law, shall be rea-

sonably devised, advised, or required; WHICH fines, and all and every fine and fines, heretofore had, levied, or acknowledged, or hereafter to be had, levied, or acknowledged, of the said several and respective parts and shares of the said ———, and all other the premises, or any part thereof, either alone, or together with any other messuage, &c. by and between the said parties to these presents, or any of them, either alone, or together with any other person or persons, shall be and enure, and shall be construed, adjudged, deemed and taken, and so are, and were meant, and intended, to be and enure, and are hereby declared and agreed, by and between all the said parties to these presents, to be and enure, to the use and behoof of the said D, and his heirs; TO THE INTENT, To strengthen, corroborate, and confirm the estate hereby granted and released, or intended to be hereby granted and released, to the said D, and his heirs, and to make him a perfect and lawful tenant, of the freehold and inheritance, of the said several and respective parts and shares, of all and singular the said ———, hereby granted and released, or mentioned to be hereby granted and released, so that good and perfect recoveries may be had against him for the same; AND for that intent and purpose, it is hereby agreed, by and between all the parties to these presents, that on or before the end of Easter term next ensuing the day of the date hereof, or as soon after as may be, it shall and may be lawful, to and for the said E, to sue forth and prosecute, out of his Majesty's court of Chancery, writs of entry *sur disseizin en le poſt*, returnable, and to be returned, before his Majesty's Justices of the court of Common Pleas at Westminster, thereby demanding, by apt and convenient names, quantities, qualities, and descriptions, the said several and respective parts and shares of ———, against the said D; To which said writs of entry, he the said D, shall appear *gratis*, either in his own proper person, or by his attorney or attornies in that behalf lawfully authorized, and shall vouch to warranty the said A, and B his wife, who shall also appear *gratis*, in their own proper persons, or by their attorney or attornies, in that behalf lawfully authorized, and shall enter into warranty, and vouch over the common vouchee of the same court, who shall also appear, and after imparlance shall make default, so as judgment shall and may be had and given thereupon, for the said E, to recover the said several and respective parts and shares of the said premises, against the said D; and for him, the said D, to recover in value against the said A, and B his wife; and for them the said

Recovery.

Uses.

A, and B his wife, to recover in value against the said common vouchee: and that such farther proceedings shall be had therein, that good and perfect common recoveries may be had and prosecuted, executed and perfected, in and upon the said writs of entry, in all things, according to the usual course and form of common recoveries, for assurance of land, in such cases used. AND it is hereby covenanted, concluded, declared, and agreed, by and between all and every the said parties to these presents, for themselves and their heirs, That from, and immediately after, the suffering and perfecting the said common recoveries as aforesaid, as well these presents, and the assurance and assurances hereby made, AS also the said recoveries, so as aforesaid, or in any other manner, or at any other time or times, suffered, or to be suffered, and all and every other common recovery or recoveries, fine or fines, conveyance and conveyances, assurance and assurances in the law whatsoever, heretofore had, made, levied, executed, or suffered, or hereafter to be had, made, levied, executed or suffered, of the said ———, and premises, or any part or parts thereof, either alone, or together with any other messuages, lands, tenements, or hereditaments, or any part or share, or parts or shares thereof, by or between the said parties to these presents, or any of them, or whereunto they, or any of them, are, is, or shall be, party or parties, privy or privies, either with or without any other person or persons, shall be and enure, and shall be construed, adjudged, expounded, deemed, and taken, and so are, and were meant, and intended, to be and enure, and are hereby declared, by all the said parties to these presents, to be and enure, and the recoverer or recoverers, in such recovery or recoveries, named or to be named, and his and their heirs, and all and every other person and persons whomsoever, shall stand, and be seized of the said several and respective parts and shares of the said ———, and all and singular other the said premises, mentioned to be hereby granted and released, and every part and parcel thereof, to the proper use and behoof of the said F, her executors, administrators, and assigns, for, and during, the said term of one thousand years, without impeachment of waste, and for the better strengthening, corroborating, and confirming the said term; AND immediately from and after the end, or other sooner determination of the same term of one thousand years, and subject thereto, and as the same shall end and determine, THEN to the use and behoof of the said A, and B his wife, and the survivor of them; AND immediately from and

after the decease of such survivor, THEN to the use and behoof of such person and persons, and to and for such estates, intents, and purposes, as the said B, notwithstanding her coverture, by any deed, will, or writing, to be signed and sealed by her, the said B, in the presence of two or more credible witnesses, shall direct and appoint; AND in the mean time, and until, and in default of, such direction and appointment, TO the use and behoof of H and I, daughters of the said A and B, equally, and share, and share alike, as tenants in common, and not as joint-tenants, and of the heirs of the respective bodies of the said H and I, lawfully to be begotten; AND if either of them, the said H and I, shall depart this life without issue of her body, lawfully to be begotten, THEN, as to the part or share of such daughter so dying without issue, TO the use of the other of the said daughters, and the heirs of her body, lawfully to be begotten; AND upon failure or default of issue of the bodies of both the said H and I, THEN to the use of K, son of the said A, and B his wife, and the heirs of the body of the said K, lawfully to be begotten; AND in default of such issue, THEN to the use of the heirs of the body of the said B, lawfully begotten, or to be begotten; AND in default of such issue, THEN to the use of L, son of the said C, deceased, (who was the uncle of the said B,) and the heirs of the said L. IN WITNESS, &c.

* *A Conveyance, by Lease and Release, of a Mortgage in Fee,—And of a Bond for Payment of the Money lent.* No. V.

Release.

THIS INDENTURE, made, &c. &c. between B of ———, &c. of the one part, and C of ———, &c. of the other part. WHEREAS, by certain indentures of lease and release, by way of mortgage, the lease bearing date, the ———, and the release the ———

* See Assignments, No. 1.

LEASE AND RELEASE.

day of —, last past, made, or mentioned to be made, between A of —, &c. of the one part, and the said B of the other part; he, the said A, in consideration of the sum of —, of lawful money of Great Britain, to him in hand paid by the said B, thereby granted, bargained, sold, alienated, released, and confirmed, unto the said B, his heirs and assigns, ALL that —, and all the estate, right, title, interest, use, trust, property, claim, and demand, whatsoever, both at law and in equity, of him, the said A, of, into, or out of, the same, and every part and parcel thereof, TO HOLD unto and to the use of the said B, his heirs and assigns for ever; Subject nevertheless, to a proviso or condition for redemption of the said premises, upon payment by the said A, his heirs, executors, or administrators, unto the said B, his executors, administrators, or assigns, of the full sum of —, with lawful interest for the same, in the manner and at the time therein-mentioned, and now long since past, as in, and by, the said recited indenture of release, relation being thereunto had, will more fully appear: AND WHEREAS, for the better securing the payment of the said principal sum of —, with the interest thereon, as aforesaid, the said A, did also enter into, and execute to the said B, one certain bond or obligation, bearing even and equal date with the said indenture of release, in the penal sum of —, with a condition thereunderwritten for making void the same, on payment of the principal sum of —, together with the interest for the same, in the manner and at the time therein-mentioned: AND WHEREAS, neither the aforesaid principal sum of —, nor the interest, were paid according to the said proviso or condition of redemption, whereby the estate and interest of the said B, of and in the same premises, became absolute in law: AND WHEREAS, the said C hath offered to pay unto the said B, the aforesaid principal sum of —, with the interest thereon, upon his conveying and assigning to the said C, the said mortgaged premises, and the said indenture of lease and release, with the said bond and monies thereby due; NOW THIS INDENTURE WITNESSETH; That for, and in consideration of, the sum of — pounds, of lawful money of Great Britain, to him in hand well and truly paid by the said C, at, or immediately before, the sealing and delivering of these presents, being in full for the principal money and interest due on the said mortgage, the receipt whereof, he, the said B, doth hereby acknowledge, and thereof, and therefrom, and of, and from every part

and parcel thereof, doth acquit, release, and discharge, the said C, his heirs, executors, and administrators, and every of them for ever: HE, the said B, hath granted, bargained, sold, &c. and by these presents doth grant, &c. unto the said C, (in his actual possession now being, &c.) and to his heirs and assigns, ALL that ———, and the reversion and reversions, remainder and remainders, rents, issues, and profits, of all and singular the said premises, and all the estate, right, title, interest, use, trust, possession, property, claim, and demand, whatsoever, either at law, or in equity, of him, the said B, of, in, to, or out of, the same premises, and every part or parcel thereof; And all deeds, evidences, and writings, in the custody or possession of the said B, relating to, or in any wise concerning the premises hereby granted and released; TO HAVE and to HOLD the said ———, and all and singular other the premises, hereby granted and released, or mentioned, or intended, so to be, with their, and every of their, appurtenances, unto the said C, his heirs and assigns, TO and FOR the only proper use and behoof of the said C, his heirs and assigns for ever; (Subject nevertheless, to such right and equity of redemption, as the said A, his heirs and assigns, may have therein, on payment of the aforesaid principal sum and interest, and all costs and charges, due, and to become due, thereon:) And the said B, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and declare, to and with the said C, his heirs and assigns, That he, the said B, hath not, at any time or times heretofore, done, committed, or willingly or wittingly suffered, any act, deed, matter, or thing whatsoever, whereby, or by means whereof, the said ———, and premises, hereby granted and released, or intended so to be, or any part thereof, is, are, can, shall, or may be impeached, charged, affected, or encumbered, in title, estate, or otherwise howsoever. AND THIS INDENTURE ALSO WITNESSETH; That the said B, for the consideration aforesaid, and also in consideration of the farther sum of five shillings, of lawful money to him in hand paid by the said C, at, or immediately before, the sealing and delivering of these presents, the receipt whereof is hereby acknowledged, hath assigned, transferred, and set over, and by these presents doth assign, transfer, and set over, unto the said C, his executors, administrators, and assigns, the said recited bond or obligation, &c. (*as in the assignment to a bond. See assignments.*) And lastly, the said B, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and

Covenant that the releaser has done no act to encumber.

For farther assurance.

LEASE AND RELEASE.

agree, to and with the said C, his heirs, executors, administrators, and assigns, that he, the said B, his heirs, executors, or administrators, and every of them, shall and will, from time to time, and at all times hereafter, upon the reasonable request of the said C, his heirs, executors, administrators, or assigns; but at the proper costs and charges in the law of the said C, his heirs, executors, administrators, or assigns, make, do, acknowledge, and execute, or cause, or procure to be made, done, acknowledged, and executed, all, and every such farther and other, lawful and reasonable, act and acts, deed and deeds, devices, conveyances, and assurances in the law, whatsoever, for the farther, better, more perfect, and absolute granting, conveying, and assuring the said ———, and premises, with the appurtenances, unto and to the use of the said C, his heirs and assigns, And also for confirming unto the said C, his executors, administrators, and assigns, the said bond or obligation, and enabling him and them, to recover and receive the principal money and interest thereby secured, as by the said C, his heirs, executors, administrators, or assigns, or any of them, or his or their counsel, learned in the law, shall be reasonably devised, or advised and required. IN WITNESS, whereof, &c.

LETTERS OF ATTORNEY.

*A general Letter of Attorney to recover Debts,—to take
Payment in, or Security on, Lands, &c.—to Sell
and Dispose of such Lands, &c.—and to release or
surrender and renew Mortgages, &c.* No. I.

KNOW ALL MEN by these presents, THAT A, B, C, and D, of the city of Glasgow, in that part of the kingdom of Great Britain called Scotland, Merchants and Copartners, Have, and each and every of them hath, made, named, constituted, authorized, and appointed, and by these presents do, and each and every of them doth, make, name, constitute, authorize, and appoint, and in their stead and place, put, jointly or separately, E and F, of the parish of ———, in the island of ———, Esquires, their, each and every of their, true and lawful attornies and attorney, For them, and in their names, and in their behalf, and to and for their use and behoof, To recover and receive, of and from all and every person and persons in the said island of ———, who now are, or shall, or may, at any time or times hereafter, become indebted to them, the said A, B, C, and D, ALL and every such sum and sums of money, debts and demands whatsoever, as now are, or shall, or may, at any time or times hereafter, so as aforesaid, become due and owing to them in the said island of ———; AND, upon recovery and receipt of such sum and sums of money, debts and demands, or any part thereof, For them, the said A, B, C, and D, and in their names, to make, execute, and deliver, all such releases, acquittances, or other good and sufficient discharges, as shall be judged requisite

and proper for the same; And, in case of refusal or non-payment, to commence and prosecute with effect, all such action and actions at law, or in equity, and to have, use, and take, all such lawful ways and means, as shall be judged necessary and requisite for the recovery of such sum and sums of money, debts, and demands: And for them, the said A, B, C, and D, and in their behalf, to accept, receive, and take, in lands, tenements, slaves, hereditaments, and other real or personal property, satisfaction and payment, or security, for all and every such sum and sums of money, debts and demands, whatsoever, or any part thereof, as now are, or shall, or may, at any time or times hereafter, become due and owing to them as aforesaid, in the said island of ———; And also, for them, the said A, B, C, and D, and in their behalf, if they the said E and F, or either of them, shall think proper, to sell and dispose of all such lands, tenements, slaves, hereditaments, and other real and personal property, so as aforesaid to be accepted, received, and taken by them, or either of them, in satisfaction and payment of the said sum and sums of money, debts and demands, or any part thereof: And also, for them, the said A, B, C, and D, if it shall be necessary, to release, surrender, assign or cancel, all such mortgages, and other securities, as they, the said A, B, C, and D, now hold for all or any part of the sum and sums of money, debts and demands, at present due and owing unto them, in the said island of ———; And to accept, receive, and take, such other security or securities, in lieu and place of those so released, surrendered, assigned, or cancelled, as they, the said E and F, or either of them, shall judge proper: With full power and authority also, to the said E and F, or either of them, duly to execute, (by signing the several names, and affixing the several seals, of them the said A, B, C, and D, to, and delivering in due form of law,) All such deeds of conveyance, and other instruments, as shall be found requisite for the purposes aforesaid: And also, for them, the said A, B, C, and D, to compound and agree for the said sum and sums of money, debts and demands; And, in general, to do, perform, and execute, all and every such farther and other, lawful and reasonable, acts, deeds, matters, and things, whatsoever, needful and requisite for the purposes herein before-mentioned, as fully and effectually, as the said A, B, C, and D, might, or could do themselves, if personally present; Ratifying and confirming, and hereby promising to ratify, allow, and confirm, all and whatsoever the said

E and F, or either of them, shall lawfully do, or cause to be done in the premises, by virtue of these presents. IN WITNESS whereof, the said A, B, C, and D, have hereunto set their hands and seals, the — day of —, in the year of our Lord —.

Sealed and delivered, (being
first duly stamped,) in the
presence of

} G.
H.

A.



B.



C.



D.



To receive a Legacy.

No. II.

WHEREAS A, late of —, in the county of —, and island of —, &c. by his last will and testament, bearing date the — day of —, did give and bequeath unto B of —, in that part of the kingdom of Great Britain called Scotland, the sum of — pounds, of lawful money of Great Britain, to be paid to the said B, upon his sealing and delivering a general release to the executors of the said A, and made and constituted C of —, and D of —, his executors, and shortly after died: **AND** WHEREAS the said C and D, have proved the said will, and the said B hath signed such general release to them, as by the said will is directed, and transmitted the same to E of —, his attorney, herein after-named, to be delivered to the said C and D, on payment of the said sum of —. **NOW KNOW ALL MEN** by these presents, That the said B, hath made, named, autho-

rized, constituted, and appointed, and by these presents doth make, name, authorize, constitute, and appoint, the said E, to be his true and lawful attorney, for him, and in his name, and to his use, to ask, demand, and receive, of and from the said C and D, the said legacy of ———, given and bequeathed to the said B, by the said A, in his said last will as aforesaid; And on receipt thereof by the said E, to deliver the said general release, so sealed as aforesaid, or to give such other discharge as shall be sufficient; hereby ratifying, allowing, and confirming, all and whatsoever the said E shall lawfully do in the premises. IN WITNESS, &c.

No. III. *To receive the Distributive Share of an Intestates' Estate.*

TO ALL TO WHOM these presents shall come, A of ———, &c. sends greeting; WHEREAS, B, sister of the said A, died lately, intestate, by means whereof, and by virtue of the statute made for the better distributing intestates' estates, HE, the said A, is become entitled to a distributive share of his said sister's personal estate. NOW KNOW YE, That the said A hath made, named, authorized, constituted, and appointed, and by these presents doth make, name, constitute, authorize, and appoint, C of ———, &c. his true and lawful attorney, for him, the said A, and to his use, to ask, demand, sue for, recover, and receive, of and from D of ———, &c. administrator of the said B, all the said A's distributable share of the personal estate of his said sister, which he is by law entitled to; and all other sum and sums of money, goods, chattels, and personal estate, whatsoever, which by the said B's dying intestate, belong, or ought to belong, to the said A; And receipts, and other legal and sufficient discharges, for him, the said A, and in his name, to give and deliver to the said D, for what he, the said C, shall so receive; And to make any agreement or composition for the said A his distributable share of his said sister's personal estate; And whatsoever the said C shall lawfully do, or cause to be done in the premises, by virtue of these presents, he, the said A, hereby ratifies, and promises to ratify, allow, and confirm. IN WITNESS, &c.

LETTERS OF ATTORNEY.

137

To receive Money due by Bond.

No. IV.

_____ TO ask, demand, and receive, of and from C of _____, the sum of _____, due to the said A, in and by one bond or obligation, bearing date the _____ day of _____, in the year _____; AND upon non-payment thereof, to have, use, and take, all lawful ways and means in his name, for recovery of the same, by attachment, bill, plaint, arrest, or otherwise; And on payment thereof, to deliver up and cancel the said bond, and give and deliver such discharges and releases as shall be judged sufficient and requisite for the same: Ratifying, and hereby promising to ratify and confirm, &c. IN WITNESS, &c.

To receive and discharge Rents.

No. V.

_____ TO ask, demand, sue for, recover, and receive, all and every such rents, and arrears of rent, as are now due and owing, or which, at any time or times hereafter, shall grow due or owing to him, the said A, by or from C, D, E, and F, or any of them, as tenants or occupiers of all those _____, situated, lying, and being in the parish of _____, and county of _____, in _____, or by any of them, or by or from any other person or persons whomsoever, as tenants or occupiers of the aforesaid _____, or any of them, or any part or parcel thereof; AND in case of refusal and non-payment of the said rents, and arrears of rent, or any part thereof, to enter and distrain, and the distress and distresses, then and there found, to take, lead, drive, carry away, and impound, and in pound to detain and keep, or otherwise to sell and dispose of the same according to law; And upon payment of the said rents, or arrears of rent, or any part thereof, for him, the said A, and in his name, to give acquittances and discharges for the same; and the monies so by him received, immediately thereupon to pay over to the said A, his executors and administrators; And farther to do and execute all and every other, lawful and reasonable, act and acts, thing and things, needful and requisite for recovering, receiving,

LETTERS OF ATTORNEY.

and obtaining the said rents, and arrears of rent, now due, or to grow due for the premises, or any part thereof, but to the use, as aforesaid, of the said A, as fully and effectually, to all intents and purposes, as if he were personally present; Hereby ratifying and confirming, all and whatsoever his said attorney shall lawfully do, or cause to be done in the premises, by virtue of these presents. IN WITNESS, &c.

No. VI.

To take Possession of Lands for a Purchaser.

—— TO take and receive peaceable and quiet possession and seizin, of, and in, ALL that ——, lately sold and released by C of ——, to the said A; AND the same possession so had and taken, to detain and keep to the only use and behoof of him, the said A, his heirs and assigns, according to the purport, true intent, and meaning of the indentures of lease and release, whereby the said premises are conveyed to him: And the said A, does hereby ratify, and promise and agree to ratify, allow and confirm, all and whatsoever his said attorney shall lawfully do, or cause to be done in the premises, by virtue of these presents. IN WITNESS, &c.

No. VII.

* *From a Husband and Wife, to Sell a Plantation, Sugar-work, and Negroes, and to execute the Deeds of Conveyance.*

KNOW ALL MEN by these presents, That A, of the city of ——, and county of ——, in that part of the kingdom of Great Britain called Scotland, Merchant, and Emilia his wife, heretofore (*or formerly*) Emilia P ——, Have, and each of them

* A Conveyance by Lease and Release, to a person in trust, is perhaps a more proper method of selling lands, &c. in the West Indies, &c. See Conveyances by Lease and Release, No. 2.

hath, made, named, constituted, authorized, and appointed; AND by these presents do, and each of them doth, make, name, constitute, authorize, and appoint, and as far as they, jointly or separately, may or can, in their stead and places, put and depute, B of the parish of ———, in the island of ———, Esquire, their true and lawful attorney, For them, and each of them, and in behalf of them, and each of them, to contract and agree for the sale, and at and for such reasonable rates and prices as he the said B shall think fit, to sell and dispose of, ALL that plantation and sugar-work, of them the said A, and Emilia his wife, in right of her the said Emilia, commonly called ———, lying and being in ———, containing, by estimation, ——— acres, (be the same more or less,) And also, all those twenty negro, and other slaves, upon, and belonging to, the said plantation and sugar-work; that is to say, (*here name the slaves,*) and the future issue, offspring and increase of the females of the said slaves: And for them, the said A, and Emilia his wife, and each of them, duly to execute, by signing the respective names, and affixing the several seals, of them, the said A, and Emilia his wife, to, and delivering to the purchaser or purchasers of the plantation and sugar-work, and negroes aforesaid, or any of them, all such deeds of conveyance, or other instruments, as shall be thought proper and necessary for the sufficient conveying and assuring the same; And, generally, to do, perform, and execute, all, and every such farther and other, lawful and reasonable, acts, deeds, matters, and things, whatsoever, needful for the purposes herein before-mentioned, as fully and effectually, to all intents, as the said A, and Emilia his wife, or either of them, might or could do themselves, if personally present. Ratifying, and hereby promising to ratify, allow, and confirm, all and whatsoever the said B shall lawfully do, or cause to be done in the premises, by virtue of these presents: Provided always, that the said B, shall and do pay over the monies, which shall arise by such sale or sales, as and when the same shall be made and perfected, to the said A, his executors, administrators, and assigns, to and for, his and their, sole and proper use and benefit, or as he or they shall order, direct, or appoint. IN WITNESS whereof, &c. &c.

No. VIII. * *From an Heir at Law, to take Possession of a Plantation, &c. and Let the same, &c.*

KNOW ALL MEN by these presents, That A of ———, in that part of the kingdom of Great Britain called Scotland, Merchant, son, (*or brother, nephew, &c. as the case may be,*) and heir at law, of B late of ———, in the parish of ———, in the island of ———, deceased, who died intestate, whereby the said A became entitled to his whole real estate, Hath made, named, constituted, authorized, and appointed, and by these presents doth make, name, constitute, authorize, and appoint, and in his place and stead, put and depute, jointly or separately, C and D, of the parish of ———, in the island of ———, aforesaid, Esquires, his true and lawful attornies or attorney; For him, the said A, and in his name, To enter into, and take and receive possession and seizin, by all lawful ways and means whatsoever, of all and singular, those plantations and sugar-works, lands, tenements, and hereditaments, and negro and other slaves, in the island of ———, aforesaid, which were late the estate of the said B, deceased, or whereof, or wherein, he was seized or possessed, or had or claimed any manner of estate, right, title, interest, or demand; and which, by his decease, now belong, or ought to descend and belong, to the said A: And for that purpose to sue for and prosecute, as occasion shall require, against all, or any person or persons, whom it doth or may concern, such action or actions, writ or writs, as they, the said C and D, or either of them, shall think fit; And upon obtaining such possession and seizin, for him, the said A, and in his behalf, to demise and let the same, or part thereof, to any person or persons, as tenants at will, for the best and most improved yearly rent that can be had for the same: And also, for the said A, and in his behalf, To demand, levy, sue for, recover and receive, by all lawful ways and means whatsoever, of and from, all and every person and persons, whom it shall or may concern, all and singular, the rents, profits, and produce, sum and sums of money, goods and effects whatsoever, which now belong, or are due and owing to him, as heir at law of the

* See Observations on Title to things Personal, by Testament and Administration, Sect. 19. and 22.

faid B; And on receipt thereof, acquittances, or other good and sufficient discharges for the same, for him, the said A, and in his name, to make, seal, and deliver: And, generally, to do, perform, and execute, all and every such farther and other, lawful and reasonable, act and acts, thing and things whatsoever, needful and requisite for attaining possession and seizin of the aforesaid plantation, &c. or letting the same, or recovering the rents, profits, and produce thereof, and of the other sums, goods, and effects, herein before-mentioned, as fully and effectually, to all intents and purposes, as the said A, might or could do, if personally present: ratifying, and hereby promising and agreeing to ratify, allow, and confirm, all and whatsoever the said C and D, or either of them, shall lawfully do, or cause to be done in the premises, by virtue of these presents. PROVIDED always, That the said C and D, or either of them, shall and do pay over, or remit and consign, all and every sum and sums of money, goods and effects, rents, profits, and produce, which they, or either of them, at any time or times, shall recover and receive, by virtue of these presents, to the said A, or to such other person or persons, as he, the said A, shall, by a writing under his hand, direct and appoint. IN WITNESS, &c.

** From the nearest in kin, to procure Letters of Administration.*

No. IX.

WHEREAS A, late of the parish of ———, in the county of ———, and island of ———, Esquire, died in the month of ———, last past, intestate, without wife, child, or parent.

NOW KNOW ALL MEN by these presents, That B of ———, in that part of the kingdom of Great Britain called Scotland, Merchant, the brother; C of ———, in Scotland aforesaid, Merchant, and D his wife, the sister of the said A deceased, have, and each and every

* See Observations on Title to things Personal, by Testament and Administration, Sect. 19, 22.

LETTERS OF ATTORNEY.

of them hath, made, &c. and by these presents do, and each and every of them doth, make, &c. E of the said parish of ———, county of ———, and island of ———, aforesaid, their, each and every of their, true and lawful attorney, for them, each and every of them, to appear in the court of Ordinary, before the Ordinary of the said island of ———, and to pray and procure letters of administration, of all and singular the goods, chattels, and credits, of the said A, deceased, to be committed and granted unto him, the said E, for and unto the sole use and benefit of them, the said B, C, and D his wife; And to do, perform, and execute, all and whatsoever thing and things, needful and requisite in the premises, as fully and effectually, to all intents and purposes, as the said B, C, and D his wife, might or could do if personally present; ratifying, and hereby promising to ratify, allow, and confirm, all and whatsoever the said E shall lawfully do, or cause to be done in the premises, by virtue of these presents. IN WITNESS, &c.

No. X.

*From Executors,—to settle Accounts,—receive Debts,
—take Possession of a Plantation,—sell or Let the
same, and to execute and deliver the Deeds of Con-
veyance, &c.*

KNOW ALL MEN by these presents, That we A of ———, and B of ———, surviving executors of the last will and testament of C, late of ———, deceased; have, and each of us hath, made, named, constituted, authorized, and appointed, and by these presents do, and each of us doth, make, name, constitute, authorize, and appoint, D of ———, to be our true and lawful attorney, for us, and in our names, and in our behalf, to settle and finally adjust, all and all manner of accounts, reckonings, claims, demands, disputes, differences, matters, and things whatsoever, now subsisting or that may happen to arise between us, and any person or persons in ———, aforesaid, touching, or in any wise concerning, the affairs

and estate of the said C, deceased; and, if necessary, to sue for, levy, and recover the same, by all lawful ways and means whatsoever; AND ALSO, for us, and in our names, and in our behalf, to sue for, levy, recover, and receive, all debts and sums of money, which now are, or shall hereafter become due and owing to the estate of the said C, deceased, on, or by virtue of, any mortgage or security, made and granted to the said C, deceased, or to us, or either of us, or in trust for us, or either of us, as executors aforesaid; or by or on any bond, bill, accmpt, or otherwise; And also, the rents and arrears of rent, which now are, or shall hereafter become due and owing to us, for, or in respect of, all, every, and any, of the plantations, lands, tenements, hereditaments, &c. which belonged to the said C, deceased, in the said ———, and, if necessary, to distrain for such rents and arrears of rent, and to sell and dispose of such distresses: And upon receipt of all or any part of the said debts, sum and sums of money, rents and arrears of rent, sufficient acquittances and discharges for the same, for us, and in our names, to make, seal, and deliver; And likewise for us, and in our names, and in our behalf, to enter into, receive and take possession and seizin, of all, every, or any, the plantations and sugar-works, lands and hereditaments, and all the negro and other slaves, late the estate of the said C, deceased, and to set, let, and demise the same, or part thereof, to any person or persons as tenants at will, or for any time, term, or number of years, not exceeding ——— years, at and for the best and most improved rent and rents, that can or may be had or gotten for the same, without taking any fine, or foregift for the same: And, if he, the said D, shall think fit, to contract and agree for the sale, and at and for such reasonable rates and prices as he shall judge proper to sell and dispose, of all or any part or parts of the said plantations and sugar-works, lands, hereditaments, and negro and other slaves, late the estate of the said C, deceased; And, upon such sale or sales, duly to execute, by signing our names, and affixing our seals, to such contracts, agreements, deeds, writings, conveyances, and assurances, as shall and may be needful and necessary, and delivering the same in due form of law; And, in general, to do, execute and perform, all, and every such farther and other, lawful and reasonable, acts and deeds, thing and things whatsoever, needful and requisite for the several purposes herein before-mentioned, as fully and effectually, to all intents and purposes, as we, or either of us, if personally present, might or could do. And for the better

LETTERS OF ATTORNEY.

enabling him so to do, we, and each of us, do hereby authorize and empower the said D, to nominate and appoint, one or more attorney or attornies under him; ratifying, and hereby promising and agreeing to ratify, allow, and confirm, all and whatsoever the said D, or those to be appointed by him, shall lawfully do, or cause to be done in the premises, by virtue of these presents: PROVIDED always, (*as in precedent*, No. 8.) IN WITNESS whereof, &c.

No. XI.

*From a Guardian, to take Possession of an Estate for his Ward.**

KNOW ALL MEN by these presents, That I, A of ———, guardian for B, my infant son, the only brother and heir at law, of C, late of ———, deceased, who died intestate, whereby the said B became entitled to his whole real estate, have made, named, &c. D of ———, to be my true and lawful attorney, for me, and in my name, to enter into, receive and take possession and seizin of, ALL those ———, &c. which were late the estate of the said C, deceased, or whereof, or wherein, he was seized or possessed, or had or claimed any manner of estate, right, title, and demand, and which, by his decease, now belong, or ought to belong, to the said B; and for that purpose to sue for and prosecute, as occasion shall require, against all, or any person or persons, whom it doth or may concern, such action or actions, writ or writs, as he, the said D, shall think fit, (*add a clause to recover the rents, &c. and to account to A, as in No. 8.*) IN WITNESS, &c.

* By Nature, and the common law of England, the Father is the Guardian of his Infant-children.

To make a Partition of a Plantation.

No. XII.

TO ALL TO WHOM these presents shall come, A of ———, &c. sends greeting. WHEREAS the said A, together with B of ———, are as tenants in common, in undivided moieties, lawfully and rightfully seized and possessed of, and well entitled to, All that plantation and sugar-work, and lands thereof, commonly called and known by the name of ———, situated, lying, and being in ———; And also, those twenty negro and other slaves, upon and belonging to the said plantation and sugar-work, that is to say, Fourteen men slaves, known by their several names of ———, ———, ———, ———, &c. AND WHEREAS the said A is desirous to have his said moiety of the said plantation, &c. separated and allotted to him in severalty; NOW KNOW YE, That for the purpose aforesaid, HE, the said A, hath made, named, constituted, authorized, and appointed, and by these presents, &c. C of the parish of ———, in the said island of ———, to be his true and lawful attorney, for him, the said A, and in his behalf, to procure a final partition and division of the aforesaid plantation, &c. &c. and that either by suing out one or more writ or writs of partition, at common law, or by bill in a court of equity, or by application to any other court of judicature, in the said island of ———, or by such amicable, or other ways and means, as he shall think proper to adopt; And for him, the said A, duly to execute, (by signing his name and affixing his seal to, and delivering in due form of law,) such deed or deeds of partition, or other deeds, as shall be thought necessary and requisite for obtaining a division and allotment of an equal moiety of the aforesaid plantation, &c. &c. to the said A, and his heirs, in severalty; And, generally, to do, perform, and execute, all, &c. &c. ratifying, &c. IN WITNESS, &c.

No. XIII. *To sue for and receive Money due on a Mortgage, and to execute Conveyances, &c.*

TO ALL TO WHOM these presents shall come, B of ———, &c. sends greeting. WHEREAS in and by certain indentures of lease and release, by way of mortgage, the release bearing date the ——— day of ———, and made, or mentioned to be made, between A of ———, &c. of the one part, and the said B of the other part; He the said A, in consideration of the sum of ——— to him in hand well and truly paid by the said B, granted, bargained, and sold unto the said B, his heirs, &c. ALL that ———, Subject nevertheless, to a proviso or condition of redemption, on payment, &c. as in and by the said indenture of release, relation thereunto being had, may more fully appear; And the said B, being desirous to obtain payment of the said principal sum of ——— and interest, NOW KNOW YE, That he, the said B, hath made, &c. C of ———, &c. his true and lawful attorney, for him, the said B, and to his use, to obtain payment and satisfaction from the said A, his heirs, executors, and administrators, for the said sum of ——— and interest, and to bring actions of ejectment, bill or bills of foreclosure, and such other action or actions, either at law or in equity, as he shall think proper for the purpose aforesaid; And on receipt of the said sum of ——— and interest, or of any part thereof, releases and other good and sufficient discharges for the same to make, seal, and deliver; And also, for him, the said B, duly to execute, (by signing his name, and affixing his seal to, and delivering in due form of law,) all and every deed and deeds whatsoever, which shall be found necessary, either for releasing the right of him, the said B, to the aforesaid mortgaged premises, or for discharging any sum or sums of money, he, the said C, may or shall receive; or for conveying the said mortgaged premises to any person or persons whomsoever, and, generally, to do, &c. ratifying, &c. &c. IN WITNESS, &c.

To surrender Copy-hold Lands to the use of a Will.

No. XIV.

BY THESE PRESENTS, I, A of ———, &c. son and heir of B, late of ———, Do make, ordain, and appoint, C of ———, &c. &c. for me, and in my name, stead, and place, to surrender into the hands of the Lord of the manor of ———, in the county of ———, ALL and singular that ———, with the appurtenances, of me, the said A, within the manor aforesaid; And all such messuages, &c. with the appurtenances, held by copy of court-roll of the manor aforesaid, whereof the said B, my father, lately died seized, To the use and behoof of such person and persons, and for such estate and estates, as I, the said A, by my last will and testament, in writing, shall direct and appoint. IN WITNESS, &c.

To Dissolve a Partnership.

No. XV.

TO ALL TO WHOM these presents shall come, A, B, C, and D, of the city of ———, Merchants and copartners, send greeting. WHEREAS, in the year of our Lord ———, a certain copartnership-concern commenced, and hath since been carried on in the island of ———, between the said A, B, C, and D, and E and F, of the parish of ———, in the said island, which is now intended to be dissolved; And the said A, B, C, and D, being desirous of having all matters of account, or otherwise, touching or concerning the said partnership, or the business and affairs thereof, finally settled, adjusted, and closed, NOW KNOW YE, That, for the purposes aforesaid, they, the said A, B, C, and D, have, and each and every of them hath, made, named, constituted, authorized, and appointed, and by these presents do, and each and every of them doth, make, constitute, authorize, and appoint, and in their stead and place put, jointly or separately, G of the parish of ———, in the said island of ———, Esquire, and H and I, both of the town of ———, in the said island, Esquires, their, each and every of their, true and lawful attornies or attorney, for them, and in their names, and in their behalf, to dissolve and put an end to the said partnership-concern, by such means, and in such manner, as they,

LETTERS OF ATTORNEY.

the said G, H, and I, or either of them, shall think proper to adopt for that purpose; And also, for them, the said A, B, C, and D, and in their behalf, to settle and finally adjust, all and all manner of accounts, reckonings, claims, demands, disputes, differences, matters, and things, whatsoever, now subsisting, or that may happen to arise, between them, the said A, B, C, and D, and the said E and F, touching, or in any wise concerning, the aforesaid partnership, or the business or affairs thereof, by reference, arbitration, or such amicable or other ways or means, as they, the said G, H, and I, or either of them, may think proper to adopt with the said E and F, for the purposes aforesaid; And for them, the said A, B, C, and D, to enter into, and duly to execute, by signing their names, and affixing their respective seals to, and delivering such arbitration bond or bonds, as may be found requisite, in case such differences or disputes cannot be amicably settled, between the said G, H, I, or either of them, and the said E and F, without such aid or intervention of neutral persons; And also, for them, the said A, B, C, and D, and in their names to make, execute, and deliver to the said E and F, all such releases, acquittances, or other good and sufficient discharges, as shall be judged requisite and proper in the premises; With full power and authority also, to the said G, H, and I, or either of them, in case it shall be found necessary, For them, the said A, B, C, and D, to enter into, and execute, by signing the respective names, and affixing the several seals, of them, the said A, B, C, and D, to any bond or bonds of indemnity, that may be awarded to be executed to the said E and F, or which the said G, H, I, or either of them, may judge reasonable, touching, or in any wise concerning, the said partnership, or the business, affairs, or concerns thereof; And, generally, to do, perform, and execute, all, and every such farther and other, lawful and reasonable, acts and deeds, matters and things, whatsoever, needful or requisite for the several purposes herein before-mentioned, as fully and effectually, to all intents and purposes, as the said A, B, C, and D, might, or could themselves do, if personally present; ratifying and confirming, and hereby promising and agreeing to ratify, allow, and confirm, all and whatsoever the said G, H, I, or either of them, shall lawfully do, or cause to be done in the premises, by virtue of these presents. IN WITNESS whereof, they, the said A, B, C, and D, have hereunto set their hands and seals, the ——— day of ———, in the year of our Lord ———.

Sealed and delivered, &c.

**To vote in the choice of Assignees of an English Bankrupt's Estate.*

No. XVI.

KNOW ALL MEN by these presents, That I, A of ———, one of the creditors of B of ———, &c. against whom a commission of bankrupt, under the great seal of Great Britain, hath been awarded and issued, have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint, C of ———, my true and lawful attorney, for me, and in my name, place and stead, to appear before the commissioners, in and by the said commission named and authorized, or the major part of them, at Guildhall London, or elsewhere, at the days and times appointed in the London Gazette, for the choice of assignees of the estate and effects of the said B; And then and there, for me, and in my name, to consent with whom the monies to be received from time to time, amounting to the sum of one hundred pounds sterling, or upwards, out of the said bankrupt's estate and effects, shall remain until the same be divided: And also, for me, and in my name, to vote in the choice of one or more assignee or assignees, of the said bankrupt's estate and effects, as my said attorney, and the commissioners and creditors then present, shall think most fit and proper, for the better management, getting in, recovering, and securing of the said bankrupt's estate and effects: And also, in case that I, the said A, should happen to be chosen assignee, under the said commission, at such meeting of the creditors of the said B, then, as my said attorney, and for me, and in my name, to accept the said trust, and to execute a counter part of the assignment to the commissioners; And farther to act, do, and perform, all and whatsoever shall be needful and requisite to be done, in, about, or concerning the premises: And I do hereby ratify, confirm, and allow, all and whatsoever my said attorney shall lawfully do, or cause to be done for me, by virtue of these presents, and of the power and authority hereby to him by me given. IN WITNESS, whereof, &c.

* See Observations on the Essential Requisites of English Deeds, Sect. 30.

No. XVII.

* *To sign consent to the Commissioners of Bankrupt, certifying the Great Seal, that the Bankrupt hath conformed, and to consent to the Assignees commencing suits in equity, &c. and to receive Dividends.*

KNOW ALL MEN by these presents, That we, B of ———, &c. C of ———, &c. D of ———, &c. and E of ———, &c. creditors of A of ———, &c. the person against whom a commission of bankrupt is awarded and issued, and now in prosecution, and who have duly proved our respective debts, under the said commission, Have, and each and every of us hath, made, ordained, authorized, constituted, and appointed, and by these presents do, and each and every of us doth, make, ordain, authorize, constitute, appoint, and in our, each, and every of our, places and stead, respectively, put F of ———, &c. to be our, each, and every of our, true and lawful attorney, For us, each, and every of us, and in our, each, and every of our, names, respectively, to consent with whom the monies to be received from time to time, when the same shall amount to the sum of one hundred pounds or upwards, out of the bankrupt's estate and effects, shall remain until the same be divided; And also, for us, each, and every of us, and in our, each, and every of our names, places and stead, respectively, to vote in the choice of one or more new assignee or assignees, of the said bankrupt's estate and effects, in case of any alteration or change of the present assignees. And also, for us, each, and every of us, and in our, each, and every of our names, places and stead, respectively, to consent to the commissioners, in and by the said commission named or authorized, or the major part of them, signing a certificate for the said bankrupt's having the allowance and benefit given to bankrupts by an Act of Parliament, passed in the fifth year of the reign of his late Majesty, King George the second, entitled, "*An Act to prevent the committing of frauds by bankrupts,*" and that the said bankrupt may be

* See Observations on the Essential Requisites of English Deeds, Sect. 30.

discharged from his debts in pursuance of the said Act. And also, for us, each, and every of us, and in our, each, and every of our names, respectively, to consent not only to the commencing any suit or suits in equity, by the assignee or assignees under the said commission, touching the said bankrupt's estate, BUT also, to the submitting of any dispute or difference, between such assignee or assignees, or any other person or persons whomsoever, for, or on account, or by reason or means of, any matter, cause, or thing, whatsoever, relating to the said bankrupt's estate or effects: And likewise, to such assignee or assignees, making any composition with any person or persons, debtors or accountants to the said bankrupt, where the same shall appear necessary and reasonable. And also, for us, each, and every of us, and in our, each, and every of our names, places and stead, respectively, and for our, each, and every of our own proper uses and benefits, respectively, to ask, demand, sue for, and receive, of and from the assignee or assignees of the said bankrupt's estate and effects, or whom else these presents do, shall, or may concern, all and every such sum and sums of money, as now is, or are, or which shall hereafter become due or payable to us, the said B, C, D, and E, respectively, for our respective dividends or shares of the said bankrupt's estate and effects, on our said respective debts of ———, and ———, &c. and duly proved under the said commission as aforesaid; And on receipt thereof, for us, each, and every of us, and in our, each and every of our respective names, to sign, seal, and deliver, all and every such good and sufficient receipts, acquittances, releases, and discharges, to the said assignee or assignees, as shall and may be lawful, fit, and convenient to be executed; And, generally, to do, all, and every such farther and other, lawful act and deed, matter or thing in the law, for the better executing and discharging the power and authority hereby given, as fully and amply, to all intents and purposes, as we ourselves, or any of us, might or could do, if personally present; Hereby ratifying, allowing, and confirming, all and whatsoever our said attorney shall or may lawfully do, or cause to be done, in and about the said premises, for the better executing the purposes aforesaid, by virtue of these presents. IN WITNESS whereof, we, the said B, C, D, and E, have hereunto severally set our hands and seals, the — day of ———, &c.

No. XVIII.

To receive the Statutable Allowance of a Bankrupt.

KNOW ALL MEN by these presents, That I, A, late of ———, &c. HAVE made, &c. and by these presents do make, &c. B of ———, &c. my true and lawful attorney, for me, and in my name, place and stead, to ask, demand, sue for, and receive, of and from the present assignee or assignees, or any future assignee or assignees, of my bankrupt estate or effects, or whom else these presents do, shall, or may concern, all and every such sum and sums of money, as now is, or are, or which shall hereafter, become due and payable to me, the said A, for all, or any allowance or allowances, I may be entitled to, out of the neat produce of the said bankrupt estate or effects, by act of Parliament or otherwise howsoever, as a certificated bankrupt; And on payment of the said monies, or any of them, or any part thereof, for me, and in my name, to sign, seal, and deliver, all and every such good and sufficient receipts, acquittances, releases and discharges, to the said assignee or assignees, as shall and may be lawful, fit, and convenient to be given; And, generally, to do, all, and such other and farther, lawful act and deed, matter or thing, for the better executing and discharging the power and authority hereby given, as fully and amply, to all intents and purposes, as I myself might or could do if personally present; hereby ratifying and confirming, all and whatsoever my said attorney shall or may lawfully do, or cause to be done, in and about the said premises, for the better executing the purposes aforesaid, by virtue of these presents. IN WITNESS, whereof, I, the said A, &c.

*To receive a Military Officer's half-pay.**

No. XIX.

KNOW ALL MEN by these presents, That I, A of ———, Do hereby constitute and appoint, B of ———, to be my true and lawful attorney, For me, and in my name, to receive from the Right Honourable the present Pay-master General of his Majesty's Forces, or the Pay-master General for the time being, or any other person or persons whom it shall or may concern, all such half-pay, as is, or shall, from time to time, become due and payable to me, as a reduced ———, of the late ———, regiment of ———, and acquittances, or other good and sufficient discharges, for the same to make, seal, and deliver. IN WITNESS, &c.

No. XX.

† *Warrant of Attorney.*

*Glasgow }
to wit. }*

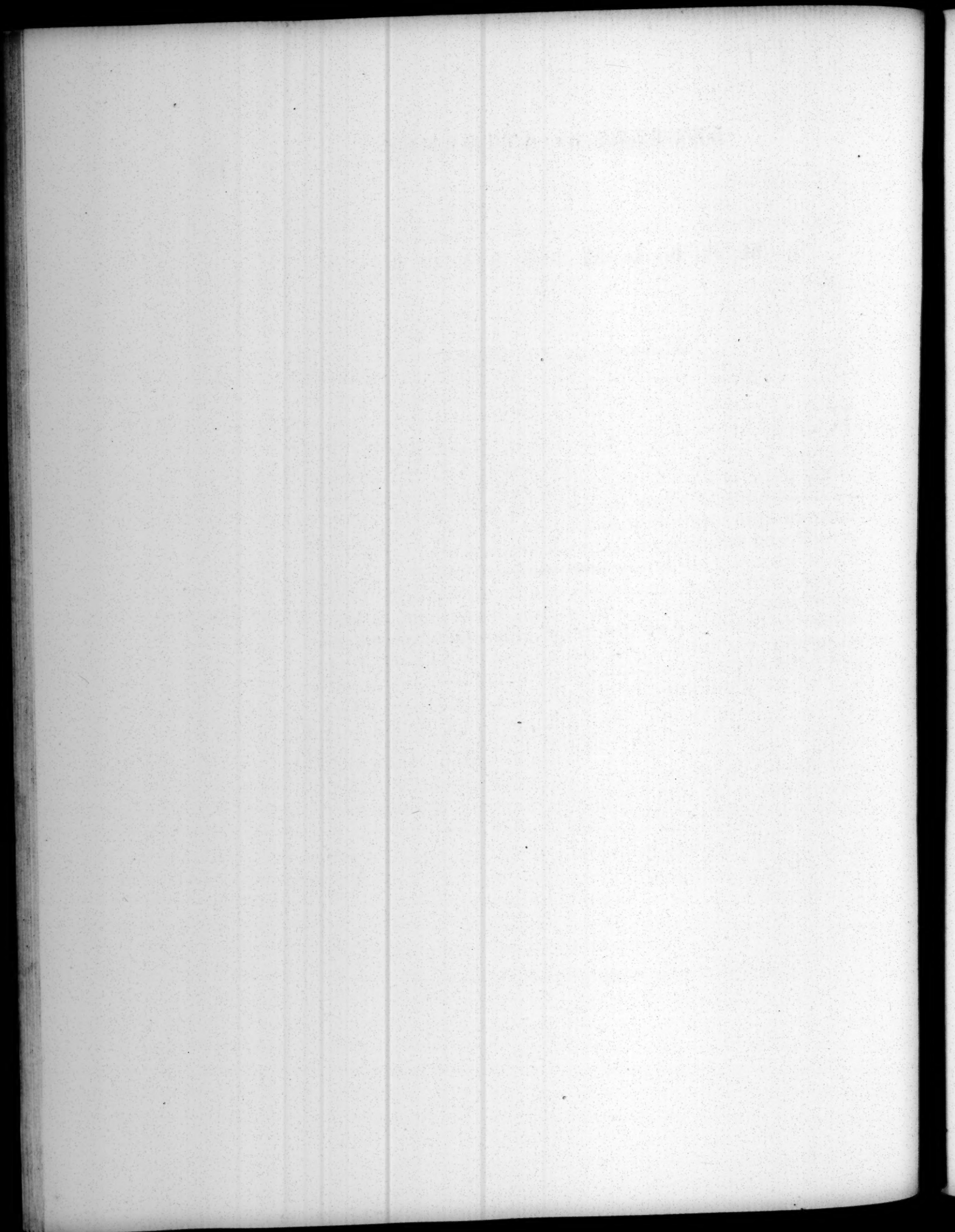
A Of ———, &c, puts in his place and stead, B of ———, &c. and C of ———, &c. his attornies or attorney, jointly and separately, against D of ———, &c. to gain or lose in a plea of land.

A.

Taken and acknowledged, the ——— }
day of ———, in the ——— year }
of the reign, &c. and in the year } F.
of our Lord ———, before us, } G.

* See Affidavits, No. 20.

† See Observations on Alienation by matter of Record, Sect. 42.



M A N U M I S S I O N.

Manumission of a Slave.

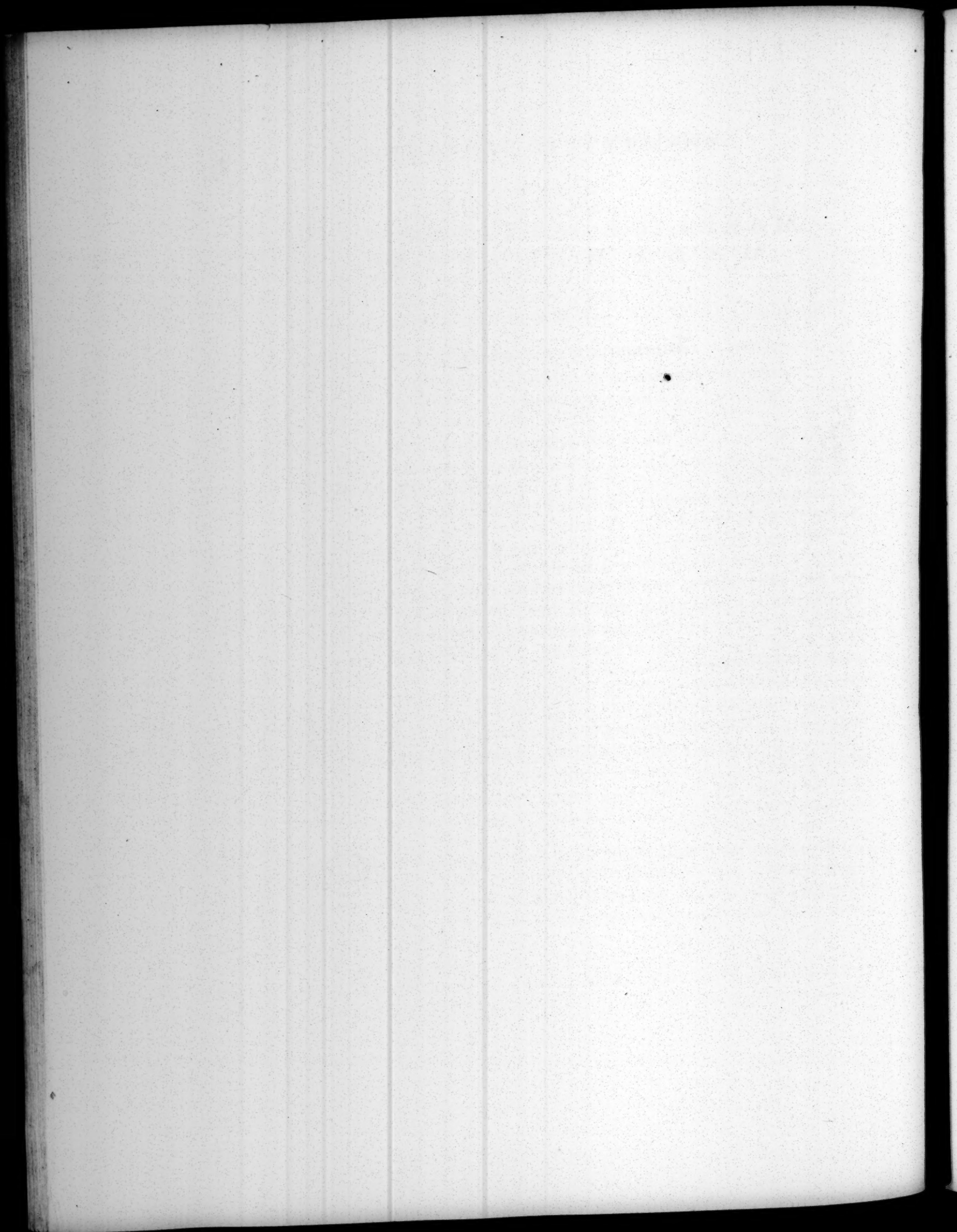
KNOW ALL MEN by these presents, That I, A of the city of Glasgow in Scotland, Merchant, proprietor of ——— plantation, in the island of ———, For, and in consideration of, the sum of ——— pounds, current money of the said island of ———, to me in hand well and truly paid by B, acting executor of the last will and testament of C, late of the said island, Planter, the receipt whereof I do hereby acknowledge, HAVE manumitted, released, enfranchised, and set free, and by these presents DO manumit, release, enfranchise, and set free, of and from, all and all manner of, slavery and servitude whatsoever, a Quadroon girl, named Susanna, the daughter of a Mulatto, named Margaret, my property, and residing on ——— plantation aforesaid, so that neither I, or my heirs, executors, or administrators, or any other person or persons whomsoever, claiming, or to claim, any manner of title under me, shall or may have any power or authority over the said Quadroon girl, named Susanna, but that she shall be absolutely free, to all intents and purposes, from the day of the date of these presents for ever. IN WITNESS whereof, I have hereunto set my hand and seal, the ——— day of ———, in the year ———.

Sealed and delivered, (being
first duly stamped,) in the
presence of

C.
D.

A.





MARRIAGE SETTLEMENTS.

Settlement, by Lease and Release, in consideration of an intended Marriage, of Lands which the Husband hath in Reversion after a Tenant for life, to the Wife for her Jointure, &c.

No. I.

THIS INDENTURE made the — day of —, between A of —, &c. of the one part, and B of —, and C of —, &c. of the other part: WHEREAS a marriage is intended to be had and solemnized between the said A, and D of —, sister of the said B; NOW THIS INDENTURE WITNESSETH, That in consideration of the said marriage, and for settling a competent jointure and provision for the said D, out of the lands and hereditaments of the said A, in case she shall survive him, in bar of her dower and thirds at common law, and for other considerations him hereunto moving, HE, the said A, Hath granted, released, and confirmed, and by these presents, for him and his heirs, Doth grant, release, and confirm, unto the said B and C, their heirs and assigns, ALL that —, &c. lying and being in —, &c. of all which premises hereby granted, or mentioned to be granted, the said B and C, are now in full possession, by force and virtue of a bargain and sale * to them thereof made by the said A, for the term of a year from the — day of —, by indenture, bearing date the day next before the day of the date hereof, and by force and virtue of the statute made for transferring uses into possession; AND farther, the said A by these presents, for the consideration aforesaid, doth grant, release, and confirm, unto the said B and C, their heirs and assigns, ALL the estate, right, title, interest, claim,

* See Conveyances by Lease and Release, for a Precedent of a Lease, or Bargain and Sale for a year.

habendum.

To the use and behoof of A the intended husband, till the marriage.

Then for the term of his natural life, sans waste.

After his death. To the use of D, the intended wife, for the term of her natural life, in name of jointure.

Then to the use of the first born son, and the heirs of his body.

Then to the use of the second son, and the heirs of his body.

Then to the use of the third son, and the heirs of his body.

Then to the use of the fourth, fifth, sixth, seventh, and all and every other son, and the heirs of their body.

Then to the daughter and daughters, and the heirs of their bodies as tenants in common.

And in default of all these, To the right heirs of the said A.

and demand, whatsoever, of him, the said A, of, in, and to, the premises, and every part and parcel thereof; To HAVE and to HOLD the said ———, &c. with their, and every of their, appurtenances, unto the said B and C, their heirs and assigns, to the several uses, intents, and purposes, herein after-mentioned, expressed, and declared, and to no other use, intent, or purpose, whatsoever; (that is to say,) To the use and behoof of the said A, and his heirs, until the said marriage; And from and after the said marriage had and solemnized, Then to the use and behoof of the said A, for and during the term of his natural life, without impeachment of, or for, any manner of waste; And from and immediately after his decease, To the use and behoof of the said D, for and during all the term of her natural life, for and in the name of her jointure, and in full recompense, lieu, and satisfaction; of all the dower which she may, or otherwise might have, claim, or challenge, in all, or any, the lands, tenements, or hereditaments, of the said A her intended husband; And from and after the decease of the said A and D, To the use and behoof of the first-born son of the said A, on the body of the said D to be begotten, and the heirs of the body of such first son lawfully to be begotten; And in default of such issue, To the use and behoof of the second son of the said A, on the body of the said D to be begotten, and the heirs of the body of such second son lawfully to be begotten; And in default of such issue, To the use and behoof of the third son of the said A, on the body of the said D to be begotten, and the heirs of the body of such third son lawfully to be begotten; And in default of such issue, To the use and behoof of the fourth, fifth, sixth, seventh, and all and every other the son and sons of the said A, on the body of the said D lawfully to be begotten, severally and successively, one after another, in order and course, as they shall be in seniority of age and priority of birth, and the several heirs of their several and respective bodies lawfully to be begotten; the elder of the said sons, and the heirs of his body, being always preferred before the younger of such sons, and the heirs of his body; And in default of such issue, To the use and behoof of all and every the daughter and daughters of the said A, on the body of the said D to be begotten, as tenants in common, and not as joint tenants, and the heirs of their several and respective bodies lawfully to be begotten; And in default of such issue, To the use and behoof of the right heirs of the said A for ever. And the said A for himself, his heirs, executors, administrators, and assigns, and for every of

them, DOTH covenant, promise, and grant, to and with the said B and C, their heirs and assigns, by these presents, in manner and form following, (that is to say,) That he, the said A, at, and immediately before, the sealing and delivering of these presents, is solely, lawfully, rightfully, and absolutely, seized of, and in, ALL and SINGULAR the said ———, of a good, pure, absolute, and indefeasible estate of inheritance in fee-simple, in reversion, or remainder, expectant immediately upon the determination of the estate which E, widow of F, late of ———, hath therein, for and during the term of her natural life only, without impeachment of, or for, any manner of waste, or subject or liable to any condition, contingent proviso, limitation of use or uses, or other restraint, matter, or thing, to determine, alter, or change the same; And that he shall continue so seized thereof, and of every part and parcel thereof, until a good, perfect, and absolute estate in fee-simple, shall be thereof vested in the said B and C, their heirs and assigns, to the uses, intents, and purposes, herein before-mentioned, and according to the true intent and meaning of these presents; And also, that he, the said A, now hath good right, lawful and absolute power and authority in himself, to grant, assign, convey, settle, and assure, the said ———, unto the said B and C, their heirs and assigns, to the uses before-mentioned, and in manner and form aforesaid: And also, that the same premises, and every part and parcel thereof, with the appurtenances, now are, and from henceforth for ever hereafter shall remain, continue, and be, to the uses, intents, and purposes, herein before-mentioned, free and clear, and freely and clearly acquitted, and absolutely discharged of, and from, all manner of former and other bargains, sales, gifts, grants, jointures, dowers, entails, estates, leases, rights, titles, rents, arrearages of rents, issues, fines, amercements, judgments, statutes, recognizances, charges, troubles, and encumbrances, whatsoever; (the estate and interest of the said E, in the said ———, and premises, for and during the term of her natural life, only excepted,) And that he, the said A, shall not do, or willingly suffer, any act or thing, which may destroy or otherwise disturb, or hinder the raising the contingent uses herein before-limited, or any of them. And the said A for himself, his heirs, executors, administrators, and assigns, and for every of them, doth farther covenant, promise, and grant, to and with the said B and C, their heirs and assigns by these presents, that he, the said A, and all and every other person and persons whomsoever, having or lawfully claiming, or who shall,

Covenant that A is lawfully seized, in fee-simple, in reversion or remainder, expectant on the determination of an estate therein for life.

And shall continue seized, till an absolute estate be vested in B and C.

And hath power to convey.

That the premises are free from encumbrances.

And shall not do, or suffer any act, to disturb or hinder, the raising the contingent uses.

For farther assurance.

MARRIAGE SETTLEMENTS.

or may, at any time or times hereafter, have, or lawfully claim, any estate, right, title, or interest, of, in, or to, the premises, hereby granted, or mentioned to be granted, or of, in, or to, any part or parcel thereof, (other than the said E, and her assigns,) shall and will, from time to time, and at all times hereafter, within the space of seven years next ensuing the date of this indenture, at and upon the reasonable request of the said B and C, their heirs, executors, or administrators, but at the proper costs and charges of the said A, his heirs, executors, or administrators, do, make, levy, execute, acknowledge, and suffer, or cause to be done, made, levied, executed, acknowledged, and suffered, all, and every such farther and other, reasonable act and acts, thing and things, assurances and conveyances in the law, whatsoever, for the farther, better, and more perfect assuring, settling, establishing, and confirming the said ———, and premises whatsoever, hereby granted or mentioned to be granted, with the appurtenances, unto the said B and C, their heirs and assigns, unto and for such and the same uses, intents and purposes, as the same premises are in and by these presents mentioned to be granted, conveyed, limited, or settled, as by the said B and C, their heirs, executors, or administrators, or their, or any of their, counsel learned in the law, shall be reasonably devised, or advised, and required: PROVIDED always, and it is hereby covenanted, granted, concluded, and agreed, by and between all and every the said parties, that if the said D, shall at any time after the death of the said A, claim, demand, or sue for, any dower or thirds, of, in, or out of, any lands, tenements, or hereditaments, of the said A, or whereof he shall be seized at any time during the said intended coverture, that then, and from thenceforth, the use and estate herein before-limited to the said D, shall cease, determine, and be utterly void, to all intents and purposes, any thing herein contained to the contrary notwithstanding. IN WITNESS whereof, the said A, B, and C, have hereunto set their hands and seals, the day and year first before-written.

Signed, sealed, and delivered,
 (being first duly stamped,) }
 in the presence of K.
 L.

A.



B.



C.



An Indenture of Marriage-Covenants, to stand seized, No. II.
*&c.**

THIS INDENTURE, made, &c. between B of ———, &c. of the one part, and C of ———, &c. of the other part. WHEREAS a marriage is intended to be had and solemnized, by and between the said B, and D of ———, &c. And whereas the said B now is and standeth lawfully and rightfully seized, in his demesne as of fee, of, and in, ALL that ———, situated, lying, and being, in ———, &c. NOW THIS INDENTURE WITNESSETH, That for the settling the before-mentioned ———, with the appurtenances, to the several uses, ends, intents, and purposes, herein after-mentioned, expressed, limited, and declared, and for divers other good causes and considerations, He, the said B, doth for himself, his heirs, executors, and administrators, and for every of them, covenant, promise, grant, conclude, and agree, to and with the said C, his executors and administrators by these presents, in manner and form following, that is to say, That he, the said B, and his heirs, and all and every other person and persons, and their heirs, who now is, or are, or, until the said marriage shall be, seized of and in the said recited ———, or any part thereof, shall and will stand and continue for ever hereafter seized, to the use and uses, ends, intents, constructions, and purposes, herein after-mentioned, expressed, limited, and declared; that is to say, To the use and behoof of him the said B, and his heirs, until the said intended marriage shall take effect; And from and after the solemnization of the said intended marriage, Then to the use and behoof of him the said B, and his assigns, for, during, and until, the full end, term, and continuance, of his natural life; And from and after his decease, Then to the use and behoof of the said D, for and during the term of her natural life, for her jointure, dower, and thirds, at the common law, out, of, and in, any other lands and premises,

Covenant that B, the owner, shall stand seized.

To the use of himself and his heirs, till marriage.

Then for the term of his natural life.

Then to the use and behoof of D, the intended wife, during the term of her life, in name of jointure, &c.

* See Observations on the several species of English Deeds, Sect. 36, 37. 38.

Then to the
heirs of the bo-
dies of B and D.

And for want of
such heirs, to
the right heirs
of the said B
for ever.

Covenants
That B is law-
fully seized.

Free from en-
cumbrances.

That B is right
owner.

which he, the said B, shall at any time hereafter die seized of; and from and after her decease, Then to the use and behoof of the heirs of the body of the said B, on the body of the said D lawfully to be begotten; and for want of such heirs, Then to the use and behoof of the right heirs of the said B for ever, and to and for no other use, intent, or purpose, whatsoever. And the said B for himself, his heirs, executors, and administrators, doth hereby covenant, promise, grant, and agree, to and with the said C, his heirs, executors, and administrators, and to and with every of them by these presents, in manner and form following, that is to say, That he, the said B, at the time of the sealing and delivering these presents, is, and stands, right-fully, lawfully, and absolutely, seized, of and in the said ———, with the appurtenances, of a good, sure, lawful, rightful, absolute, and indefeasible estate of inheritance in fee simple, to him and his heirs, free and clear, and freely and clearly acquitted, exonerated, and discharged of and from all, and all manner of, former and other gifts, grants, bargains, sales, mortgages, leases, statutes, judgments, executions, fines, forfeitures, accounts, deeds, titles, troubles, charges, demands, and encumbrances, whatsoever, heretofore had, made, done, committed, or suffered, by the said B; And farther, that he, the said B, at the time of the sealing and delivering these presents, is the true and lawful owner and proprietor of the said ———, with the appurtenances, and hath in himself, good right, full power, and lawful and absolute authority, to settle and assure the same, and every part and parcel thereof, to and for the uses, ends, intents and purposes aforesaid, according to the true intent and meaning of these presents; and that the same, and every part thereof, shall and law-fully may, for ever hereafter, be held and enjoyed, according to the limitations aforesaid: And lastly, (*covenant for farther assurance. See the foregoing precedent.*) IN WITNESS, whereof, &c.

M O R T G A G E S.

** A Mortgage in Fee, by way of Lease and Release, of two Plantations, Sugar-works, and Negroes.*

No. I.

Lease for a year to precede the release.

THIS INDENTURE, made the — day of —, in the — year of the reign of our Sovereign Lord, George the third, by the grace of God, King of Great Britain, France, and Ireland, defender of the faith, &c. and in the year of our Lord —, between A, formerly of the island of —, but now of —, in the county of —, in that part of the kingdom of Great Britain called Scotland, Esquire, of the one part, and B, of the city of —, in Scotland aforesaid, Merchant, of the other part, WITNESSETH; That the said A, for, and in consideration of, five shillings of lawful money of Great Britain, to him in hand paid by the said B, the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents doth bargain and sell, unto the said B, his executors, administrators, and assigns, All that plantation and sugar-work, of him the said A, commonly called and known by the name of —, and the lands thereof, situated, lying, and being, in the parish of —, in the said island of —, containing by estimation, — acres, (be the same

* See the Nature of Conveyances by Lease and Release, explained under Observations on the several species of English Deeds, Sect. 42, 43.—That of Mortgages, under Observations on Estates upon Condition, Sect. 6, et seq.—and for the manner of assigning,—reconveying,—releasing,—and surrendering Mortgages, See Assignments, No. 1, 2, 3.—Reconveyance.—Lease and Release, No. 5.—and Surrenders, No. 2, 3, 4.

more or less,) And also, that other plantation and sugar-work, of him the said A, commonly called and known by the name of ———, and the lands thereof, situated, lying, and being, in the parish of ———, and island of ——— aforesaid, containing by estimation, ——— acres, (be the same more or less,) howsoever the said two several plantations and lands, are respectively abutted or bounded, and by whatsoever other name or names, the same, or any part or parcel thereof, is, or are, called, known, or distinguished: And all and every the mills, mill-houses, boiling-houses, curing-houses, still-houses, trash-houses, and all other the houses, out-houses, edifices, erections, and buildings, whatsoever, on the said two several plantations and lands, respectively, or any part thereof, erected or built: And all ways, paths, passages, waters, water-courses, woods, underwoods, commons, and common of pasture, feedings, fishings, fishing-places, easements, privileges, profits, commodities, emoluments, advantages, hereditaments, and appurtenances, whatsoever, to the said two several plantations and sugar-works, or either of them, belonging, or in any wise appertaining, or therewith, or to, or with any part or parcel thereof, usually held, occupied, possessed or enjoyed, or accepted, reputed, deemed, taken, or known, as part, parcel, or member thereof, or of any part thereof: And also, all and every, the negro and other slaves, upon and belonging to the said two several plantations and sugar-works, respectively, or either of them, together with the future issue, offspring, and increase, of the females of the said slaves, respectively; And the reversion and reversions, remainder and remainders, rents, issues, and profits, thereof, and of every part and parcel thereof: TO HAVE and to HOLD the said two several plantations and sugar-works, lands, tenements, slaves, hereditaments, and premises, hereby bargained and sold, with their, and every of their, issue and increase, rights, members, and appurtenances, unto the said B, his executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during, and until, the full end and term of one whole year from thence next ensuing and fully to be completed and ended; YIELDING and paying therefore, at the end of the said term, the rent of one pepper-corn, if the same shall be lawfully demanded; To the intent, that by virtue of these presents, and of the statute made for transferring uses into possession, he, the said B, may be in the actual possession of the said two several plantations and sugar-works, lands, tenements, slaves, hereditaments, and premises, mentioned and in-

Habendum.

Reddendum.

tended, to be hereby bargained and sold, with their, and every of their, issue and appurtenances, and thereby be enabled to accept and take a grant and release of the reversion and inheritance thereof, to him, his heirs, and assigns, in such sort, manner, and form, as shall be declared in an indenture of release, intended to bear date the day next after the day of the date hereof, and to be made between the same parties as are parties hereto: IN WITNESS whereof, the parties aforesaid to these presents, have hereunto set their hands and seals, the day and year first above-written.

Signed, sealed, and delivered,
(being first duly stamped,)
in the presence of

C.
D.

A.



B.



Release.

No. 1.

THIS INDENTURE, made the — day of —, in the — year of the reign of our Sovereign Lord, George the third, by the grace of God, King of Great Britain, France, and Ireland, defender of the faith, &c. and in the year of our Lord —, between A, formerly of the island of —, but now of —, in the county of —, in that part of the kingdom of Great Britain called Scotland, Esquire, of the one part, and B, of the city of —, in Scotland aforesaid, Merchant, of the other part, WITNESSETH; That for, and in consideration of, the sum of five thousand pounds of lawful money of Great Britain, to the said A in hand well and truly paid by the said B, at, or immediately before, the sealing and delivering of these presents, the receipt whereof the said A doth hereby acknowledge, and thereof, and therefrom, and of and from every part and parcel thereof, doth acquit, release, exonerate, and discharge the said B, and his heirs, executors, and administrators, and every of them, for ever by these presents, He, the said A, hath granted, bargained, sold, alienated, enfeoffed, released,

Consideration.

and confirmed, and by these presents doth grant, bargain, sell, alienate, enfeoff, release, and confirm unto the said B, (in his actual possession now being, by virtue of a bargain and sale to him thereof made by the said A, in consideration of five shillings, by indenture bearing date the day next before the day of the date of these presents, for one whole year commencing from the day next before the day of the date of the said indenture of bargain and sale, and by force of the statute made for transferring uses into possession,) and to his heirs and assigns; ALL that plantation and sugar-work, of him the said A, commonly called and known by the name of ———, and the lands thereof, situated, lying, and being, in the parish of ———, in the island of ———, containing by estimation, ——— acres, (be the same more or less,) And also, ALL that other plantation and sugar-work, of him the said A, commonly called and known by the name of ———, and the lands thereof, situated, lying, and being, in the said parish of ———, and island of ———, containing by estimation, ——— acres, (be the same more or less,) howsoever the said two several plantations and lands, are respectively abutted or bounded, and by whatsoever other name or names the same, or part or parcel thereof, are, or is, called, known, or distinguished: And all and every the mills, mill-houses, boiling-houses, curing-houses, still-houses, trash-houses, and all other the houses, out-houses, edifices, erections, and buildings, whatsoever, on the said two several plantations and lands, respectively, or any part thereof, erected or built: And all ways, paths, passages, waters, water-courses, woods, under-woods, commons, and common of pasture, feedings, fishings, fishing-places, easements, privileges, profits, commodities, emoluments, advantages, hereditaments, and appurtenances, whatsoever, to the said two several plantations and sugar-works, respectively, or either of them, belonging, or in any wise appertaining, or therewith, or to, or with any part or parcel thereof, usually held, occupied, possessed, or enjoyed, or accepted, reputed, deemed, taken, or known, as part, parcel, or member thereof, or of any part thereof: And also, all and every the negro and other slaves, upon and belonging to, the said two several plantations and sugar-works, respectively, or either of them, together with the future issue, offspring, and increase, of the females of the said slaves, respectively; And the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part and parcel thereof: And also, all, and every, the mules, steers, neat, cattle, and other live stock, now upon, and belonging to,

the said two several plantations and sugar-works, respectively, or either of them: And all coppers, stills, worms, worm-tubs, ladles, skimmers, drips, pots, pans, wains, waggons, carts, carriages, plantation-utensils, and implements of planting, upon and belonging to, the said two several plantations, respectively, or to either of them: And also, all the estate, right, title, interest, use, trust, property, inheritance, possession, claim and demand, whatsoever, both at law and in equity, of him the said A, of, in, to, or out of, the said two several plantations and sugar-works, respectively, lands, tenements, slaves, hereditaments, mules, steers, cattle, stock, utensils, and other the premises, mentioned, or intended, to be hereby granted and released, and of every part and parcel thereof: And all deeds, evidences, letters-patent, muniments, and writings, touching or concerning the said premises, or any part or parcel thereof. **TO HAVE and to HOLD**, so much, and such part or parts of the said two several plantations and sugar-works, lands, tenements, slaves, hereditaments, mules, steers, cattle, stock, utensils, and all and singular other the premises, hereby granted and released, or intended so to be, as is, or are, of the nature of **FREE-HOLD** or real estate, with their, and every of their, issue, rights, members, and appurtenances, unto the said B, his heirs and assigns, to the only proper use and behoof of the said B, his heirs and assigns for ever: And to **HAVE and to HOLD**, so much, and such part or parts thereof, as is, or are, of the nature of **CHATTEL-INTEREST** or personal estate, unto, and to the use of the said B, his executors, administrators, and assigns. **PROVIDED** always, nevertheless, and it is hereby declared and agreed, by and between the parties aforesaid to these presents, and it is the true intent and meaning thereof, and of the said parties thereto, that if the said A, his heirs, executors, or administrators, or any of them, do and shall well and truly pay, or cause to be paid, to the said B, his executors, administrators, or assigns, or any of them, at or within the Tontine Coffee-house in the city of Glasgow, on or before the — day of —, in the year of our Lord —, the said sum of five thousand pounds, of lawful money of Great Britain, with interest thereon, at and after the rate of five pounds per centum per annum; And also, do and shall, well and truly pay, or cause to be paid, to the said B, his executors, administrators, or assigns, or any of them, at or within the Tontine Coffee-house in the city of Glasgow, as aforesaid, all such farther and other sum and sums of money, as he, the said B, shall at any time or times hereafter, before the redemption of the

Habendum.

Proviso for redemption.

faid premises, advance, lend, or pay, to or for the use or on account of the said A, together with interest for the same, at and after the rate aforesaid, at the expiration of three months next after the same shall have been so advanced, lent, or paid, and that without any deduction, defalcation, or abatement, whatsoever, out of the same, or any part thereof, for, or in respect of, any taxes, charges, assessments, or impositions, whatsoever, taxed, charged, assessed, or imposed, or to be taxed, charged, assessed, or imposed, upon the said two several plantations and sugar-works, respectively, or either of them, lands, tenements, slaves, hereditaments, mules, steers, cattle, stock, and premises, mentioned, or intended, to be hereby granted and released, or any of them, or any part or parcel thereof, or upon the said sum of five thousand pounds, or such farther and other sum and sums of money, as shall hereafter be advanced as aforesaid, or any of them, or upon the said B, his executors, administrators, or assigns, or any of them, for, or on account, or in respect of, the said hereditaments and premises, or any part thereof; then and in such case, and after such payments shall be so made as aforesaid, he, the said B, his executors, administrators, or assigns, some or one of them, shall and will upon the request, and at the proper costs and charges in the law, of the said A, his heirs, executors, administrators, or assigns, some or one of them, convey and assure, the said two several plantations and sugar-works, lands, tenements, slaves, hereditaments, mules, steers, cattle, stock, utensils, and premises, herein before granted and released, or intended so to be, with their issue and appurtenances, to the said A, his heirs, executors, administrators, and assigns, according to the nature and quality of the same premises, respectively, or as he, or they, shall in that behalf direct; free from all encumbrances, whatsoever, made, done, or committed, by him, the said B, or any of his executors, administrators, or assigns, or any other person or persons lawfully claiming, or to claim, by, from, or under them, or any of them. And the said A, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, grant, and agree, to and with the said B, his heirs, executors, administrators, and assigns, in manner following, that is to say, That he, the said A, his heirs, executors, or administrators, some or one of them, shall and will well and truly pay, or cause to be paid, unto the said B, his executors, administrators, or assigns, the said sum of five thousand pounds, with interest for the same as aforesaid; And also, all such farther and other sum and sums of money, as he, the

Covenants
For payment of
the money.

faid B, shall at any time or times hereafter, advance, lend, or pay, to or for the use or on account of the faid A, with interest thereon, as aforesaid, at the place, and on the day and time, and in such proportions, manner, and form, as herein before-limited and appointed for payment thereof, without any deduction, defalcation, or abatement, as aforesaid, according to the purport of the aforesaid proviso, and the true intent and meaning of these presents: And also, that he, the faid A, at the time of the sealing and delivering of these presents, is lawfully and rightfully seized of, and in, the faid two several plantations and sugar-works, lands, tenements, slaves, hereditaments, mules, steers, cattle, stock, utensils, and premises, or such of them as is, or are, of the nature of FREEHOLD or real estate, hereby granted and released, or intended so to be, with their, and every of their, appurtenances, of a good, sure, perfect, absolute, and indefeasible estate of inheritance in fee-simple, in possession; And of such of them, as is, or are, of the nature of CHATTEL-INTEREST or personal estate, of a good and indefeasible estate, to him, the faid A, his executors, administrators, and assigns, without any manner of condition, mortgage, reversion, remainder, trust, limitation of use or uses, power of revocation, or other matter, cause, or thing, whatsoever, to alter, change, charge, defeat, determine, make void, or in any manner to encumber the same: And also, that he, the faid B, hath in himself, at the time of the sealing and delivering of these presents, good right, full power, and lawful and absolute authority, to grant, bargain, sell, release, and confirm, the faid two several plantations and sugar-works, lands, tenements, slaves, hereditaments, mules, steers, cattle, stock, utensils, and premises, hereby granted and released, or intended so to be, and every part and parcel thereof, with their, and every of their, issue and increase, rights, members, and appurtenances, unto, and to the use of, the faid B, his heirs, executors, administrators, and assigns, in manner aforesaid, according to the purport, true intent and meaning of these presents: And also, that from and after default shall be made of, or in payment of, any of the faid sums of money, herein before-appointed to be paid, or any part thereof, or of the interest of the same, or any part thereof, contrary to the form and effect of the aforesaid proviso and covenant for payment of the same, and the true intent and meaning of these presents, it shall and be may lawful, to and for the faid B, his heirs, executors, administrators, and assigns, peaceably and quietly, to enter into, have, hold, use, occupy, possess,

Y

That the mort-
gager is lawfully
seized.

And hath right
to grant.

That in default
of payment, the
mortgagee may
enter,—And for
peaceable enjoy-
ment.

Free from encumbrances.

For farther assurance.

and enjoy the said two several plantations and sugar-works, lands, tenements, slaves, hereditaments, mules, steers, cattle, stock, utensils, and premises, mentioned, or intended, to be hereby granted and released, and every part and parcel thereof; and to have, receive, and take, the rents, issues, profits, and produce, thereof, and of every part and parcel thereof, to and for their own proper use and benefit, without the lawful let, suit, hinderance, trouble, denial, execution, molestation, or interruption, whatsoever, of, from, or by, the said A, his heirs, or assigns, or of, or by, any other person or persons, whomsoever, And THAT free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise by the said A, his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against, all, and all manner of, former and other gifts, grants, bargains, sales, leases, mortgages, jointures, dowers, right and title of dower, uses, trusts, wills, entails, statutes, recognizances, judgments, executions, extents, rents, arrears of rent, and all other titles, charges, and encumbrances, whatsoever, (the quit rents henceforth to become due and payable to his Majesty, his heirs, and successors, for and in respect of the said lands hereby granted and released, always excepted, and foreprized,) And farther, that he, the said A, and his heirs, and all and every other person and persons, having or lawfully claiming, or who shall or may have, or lawfully claim, any estate, right, title, or interest, of, in, to, or out of, the said two several plantations or sugar-works, lands, tenements, slaves, hereditaments, mules, steers, cattle, stock, utensils, and premises, hereby granted and released, or intended so to be, or any of them, or any part thereof, by, from, or under, or in trust for them, or any of them, shall and will, from time to time, and at all times, from and after default shall happen to be made of, or in payment of, any of the said sums of money herein before-appointed to be paid as aforesaid, or either of them, contrary to the form and effect of the aforesaid proviso and covenant for payment of the same, and the true intent and meaning of these presents, upon the reasonable request of the said B, his heirs, executors, administrators, or assigns, and at the proper costs and charges in the law of the said A, his heirs or assigns, make, do, acknowledge, levy, suffer, and execute, or cause, or procure to be made, done, acknowledged, levied, suffered, and executed, all and every such farther, and other, lawful and reasonable, act and acts, thing and things, devices, conveyances, and assurances in the law, whatsoever, for the

farther, better, more perfect, and absolute granting, conveying, assuring, ratifying, and confirming, the said two several plantations and sugar-works, lands, tenements, slaves, hereditaments, mules, steers, cattle, stock, utensils, and premises, hereby granted and released, with their, and every of their, issue and appurtenances, unto, and to the use of, the said B, his heirs, executors, administrators, and assigns, for ever, according to the nature and quality of the said premises, respectively, Freed and absolutely discharged, of and from the aforesaid proviso or agreement for redemption, and all equity thereupon, as by the said B, his heirs, executors, administrators, or assigns, or their, or any of their, counsel, learned in the law, shall be reasonably advised, or devised, and required; And it is hereby declared and agreed, by and between the said parties to these presents, That in the mean time, and until default shall happen to be made of, or in payment of, some of the said sums of money, herein before-appointed and covenanted to be paid as aforesaid, or some part thereof, contrary to the form and effect of the aforesaid proviso and covenant for payment of the same, and the true intent and meaning of these presents, it shall and may be lawful to, and for, the said A, his heirs and assigns, peaceably and quietly to have, hold, use, occupy, possess, and enjoy, the said two several plantations and sugar-works, lands, tenements, slaves, hereditaments, mules, steers, cattle, stock, utensils, and premises mentioned, or intended, to be hereby granted and released; and to receive and take the rents, issues and profits, thereof, and of every part and parcel thereof, to his and their own proper use and benefit, without the lawful let, suit, trouble, denial, execution, molestation, or interruption of, or by, the said B, or any of his heirs, executors, administrators, or assigns, or of, or by, any other person or persons lawfully claiming, or to claim, by, from, or under, or in trust for them, or any of them. IN WITNESS whereof, the parties aforesaid to these presents, their hands and seals have hereunto set, the day and year first above-written.

Agreement,
that until de-
fault in pay-
ment, the mort-
gager may en-
joy.

Signed, sealed, and delivered,
(being first duly stamped,)
in the presence of

C.
D.

A.



B.



No. II.

A Mortgage in Fee, by way of Lease and Release, of Lands in England, in security of a Debt due by Bond.

Lease for a year to precede the Release.

THIS INDENTURE, made the — day of —, in the — year of the reign of our Sovereign, George the third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, &c. and in the year of our Lord —, between A of —, &c. of the one part, and B of —, &c. of the other part, WITNESSETH; That the said A, for, and in consideration of, the sum of five shillings of lawful money of Great Britain, to him in hand paid by the said B, the receipt whereof is hereby acknowledged, Hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell unto the said B, ALL that messuage or tenement, &c. (*here describe the lands as in the release,*) and the reversion and reversions, remainder and remainders, rents, issues, and profits, of the said premises, above-mentioned, with their, and every of their, appurtenances, To HAVE and to HOLD the said messuage or tenement, lands, hereditaments, and premises, above-mentioned, and every part and parcel thereof, unto the said B, his executors, administrators, and assigns, from the first day of this instant —, for, and during, and until, the full end and term of one whole year from thence next ensuing, and fully to be completed and ended; YIELDING and paying therefore, at the expiration of the said year, one pepper-corn, if the same shall be lawfully demanded: TO the intent, that by virtue of these presents, and by force of the statute for transferring uses into possession, he, the said B, may be in the actual possession, of all and singular the said premises, above-mentioned, with the appurtenances, and thereby be enabled to accept and take a grant and release of the reversion and inheritance thereof, to him, and his heirs and assigns, in such sort,

Habendum.

Reddendum.

manner, and form, as shall be declared in an indenture of release, intended to bear date the day next after the day of the date hereof, and to be made between the same parties as are parties hereto. IN WITNESS whereof, the said parties to these presents, have hereunto set their hands and seals, the day and year first above-written.

Signed, sealed, and delivered,
(being first duly stamped,)
in the presence of }

Release.

No. II.

THIS INDENTURE made the — day of —, in the — year of the reign of our Sovereign, George the third, by the grace of God, of Great Britain, &c. King, defender of the faith, &c. and in the year of our Lord —, between A of —, &c. of the one part, and B of —, &c. of the other part: WHEREAS the said A, by his bond or obligation, duly executed, bearing even date with these presents, stands bound to the said B, in the sum of —, conditioned for the payment of the sum of —, with lawful interest for the same, on the — day of — next ensuing the date of these presents; NOW THIS INDENTURE WITNESSETH, that the said A, in consideration of the said debt or sum of —, and for better securing the payment thereof, with interest, to the said B, his executors, administrators, or assigns, according to the condition of the said bond; And also, in consideration of the farther sum of five shillings to him the said A, by the said B, at and before the sealing and delivering of these presents, likewise well and truly paid, the receipt whereof is hereby acknowledged, Hath granted, bargained, sold, released, and confirmed, and by these presents doth grant, bargain, sell, release, and confirm unto the said B, in his actual possession now being, by virtue of a bargain and sale to him thereof made, by indenture, bearing date the

Consideration.

Habendum.

Proviso for redemption.

Covenant for payment of the money.

That the premises are free from encumbrances.

day next before the day of the date of these presents, for the term of one whole year, and by force of the statute for transferring uses into possession, and to his heirs and assigns, ALL that messuage, &c. situated, lying, and being, in ———, &c. and all the estate, right, title, interest, use, trust, possession, benefit, property, claim, and demand, whatsoever, of him the said A, of, in, to, or out of, the same, or any part or parcel thereof, in any wise howsoever, To HAVE and to HOLD, the said messuage, &c. and all and singular other the premises herein before-mentioned, or intended, to be hereby granted and released, with their, and every of their, rights, members, and appurtenances, unto the said B, his heirs and assigns, To the only proper use and behoof of the said B, his heirs and assigns for ever; PROVIDED nevertheless, And it is the true intent and meaning of the said parties, and of these presents, That if the said A, his heirs, executors, administrators, or assigns, Do and shall, well and truly pay, or cause to be paid, unto the said B, his executors, administrators, or assigns, the said full sum of ———, of good and lawful money of Great Britain, with the lawful interest for the same, on the ——— day of ——— next ensuing the date of these presents, according to the condition of the said recited bond, without any deduction, defalcation, or abatement, whatsoever, for, or by reason of, any manner of taxes, rates, duties, assessments, impositions, or charges, whatsoever, ordinary or extraordinary, laid, rated, or assessed, or to be laid, rated, or assessed, by the authority of Parliament or otherwise howsoever, Then this present indenture, with the grant and release hereby made, and every claim, article and thing, herein contained, and also, the said bond, shall cease, determine, and become absolutely void and of no effect. AND the said A, for himself, his heirs, executors, administrators, and assigns, Doth hereby covenant, promise, and agree, to and with the said B, his executors, administrators, and assigns, in manner following, that is to say, That he, the said A, his heirs, executors, administrators, and assigns, or some of them, shall and will, well and truly pay, or cause to be paid, unto the said B, his executors, administrators, or assigns, the said sum of ———, with lawful interest as aforesaid, on the day herein before-limited for payment thereof, without any deduction, defalcation, or abatement, whatsoever; And that the said released premises, now are, and at all times, from and after any default shall happen to be made of, or in payment of, the said sum of ———, and interest, or any part thereof, shall be, remain, and continue, free

and clear of and from, all manner of former and other gifts, grants, mortgages, titles, troubles, charges, and encumbrances, whatsoever, had, made, done, committed, or wittingly suffered, by him, the said A; And also, that at any time or times after such default, he, the said A, his heirs and assigns, and every other person and persons, lawfully having or claiming any estate or interest, of or in, the said hereby released premises, or any part thereof, by, from, under, or in trust for him, shall and will, upon the request, and at the charge of the said B, his heirs or assigns, make, do, acknowledge, levy, suffer, and execute, all such farther and other acts, matters, things, devices, conveyances, and assurances in the law, whatsoever, for the farther and better conveying and assuring the said hereby released premises, unto the said B, his heirs or assigns, as aforesaid, as by him or them, or his, or their, counsel learned in the law, shall be reasonably devised, advised, or required. IN WITNESS whereof, the said parties to these presents, have hereunto set their hands and seals, the day and year first above-written.

For farther assurance.

Signed, sealed, and delivered,
 (being first duly stamped,)
 in the presence of

*Indenture of Release, and Confirmation of a Mortgage,
 by way of Security for a farther sum of Money, with
 very special Covenants.*

No. III.

THIS INDENTURE, made, &c. between A of _____, &c. of the one part, and B of _____, &c. of the other part. WHEREAS by indenture of demise or mortgage, bearing date the _____ day of _____, made between C of _____, widow of D of _____, deceased, and E of _____, son and heir of the said D of the one part, and the said B of the other part, IT IS

WITNESSED, That for the considerations therein-mentioned, the said C and E, or one of them, Did demise and grant, unto the said B, ALL that their, or one of their, messuage and farm, called by the name of ———, or by whatever other name or names the same is called or known, situated, &c. And all the houses, orchards, gardens, lands, meadows, pastures, marsh-grounds, &c. &c. &c. And all these several parcels of arable land, containing in the whole, ——— acres, be the same more or less, being part, &c. And also, ALL these several pieces of pasture, marsh or fen-ground, containing, &c. And ALL that water and fishing, called, &c. to the said farm belonging and appertaining, with their, and every of their, rights, members, and appurtenances, And the reversion and reversions, remainder and remainders, thereof; To hold to the said B, his executors, administrators, and assigns, from the day of the date of the same indenture, for the term of five hundred years, without impeachment of waste, at a pepper-corn per annum, under a proviso nevertheless, to be void on payment of the sum of ———, by the said C, her heirs or assigns, to the said B, his executors, administrators, or assigns, at the days and places in the said proviso mentioned and appointed for that purpose. AND WHEREAS, by indenture bearing date the ——— day of ———, last past, made between the said C and E of the one part, and the said B of the other part, IT IS WITNESSED, that the said C, by the consent of the said E, for the consideration therein-mentioned, Did release and confirm, All and singular the aforesaid messuage, farm, lands, tenements, and hereditaments, with their, and every of their, appurtenances, unto the said B, his executors, administrators, and assigns, for all the residue of the said term of five hundred years then to come and unexpired, freed and discharged, from the proviso contained in the said first recited indenture, under a covenant or agreement nevertheless, on the part of the said B, that if the said C, her heirs or assigns, should pay to the said B, his executors, administrators, or assigns, the sum of ———, at the days and places therein-mentioned, He, the said B, his executors, administrators, or assigns, would deliver up the said first recited indenture to be cancelled, or assign his interest in the premises to such person or persons, as the said C, her heirs or assigns, should direct or appoint, as by the said two recited indentures, relation being thereunto respectively had, may more fully appear. AND WHEREAS, the said sum of ———, was not paid according to the intent of the

saïd last recited indenture, whereby the estate and interest of the saïd B, of and in the saïd premises, became absolute in law, for the remainder of the saïd term of five hundred years, Subject nevertheless, in equity, to be redeemed by the saïd C, in whom the inheritance and fee-simple of the premises was legally vested, by virtue of a feoffment, duly executed by livery and seizin, bearing date the — day of —, made to her of the premises, amongst other things by the saïd E. AND WHEREAS the saïd C, by indentures of lease and release, the lease bearing date the — day of —, and the release the — day of —, for the considerations therein-mentioned, did absolutely convey the freehold and inheritance of the saïd mortgaged premises, and all her right and title therein, either in law or equity, unto the saïd A, his heirs and assigns, subject to the aforesaid mortgage, and to an annuity of —, payable to F, during his natural life. AND WHEREAS the saïd A, Did, sometime since, pay to the saïd B, the sum of —, in part of the principal money due upon the saïd mortgage, and hath paid and discharged all the interest grown due to this day for the remainder of the saïd principal money, which the saïd B doth hereby acknowledge to be — pounds. AND WHEREAS the saïd F, departed this life in the month of —, and was buried in the parish of —, as appears by a certificate under the hand of — of that parish; NOW THIS INDENTURE WITNESSETH, that as well for, and in consideration of, the saïd sum of — pounds, due and owing to the saïd B, as aforesaid, AS also, For, and in consideration of, the farther sum of five shillings of lawful money, &c. by the saïd B, to the saïd A in hand, at, or immediately before, the sealing and delivering of these presents, well and truly paid, the receipt whereof the saïd A doth hereby acknowledge, And thereof, and from every part thereof, Doth acquit and discharge the saïd B, his executors or administrators, by these presents, HE, the saïd A, hath granted, released, and confirmed, and by these presents doth grant, release, and confirm, unto the saïd B, the above-mentioned messuage, farm, lands, tenements, hereditaments, and all and singular other the premises, in or by the saïd two first recited indentures, or either of them, demised, granted, released, and confirmed, or intended so to be, with their, and every of their, rights, members, and appurtenances, and all the estate, right, title, interest, equity and benefit of redemption, claim and demand, whatsoever, of him, the saïd A, of, in, or to, the

- same, or any part or parcel thereof; To HAVE and to HOLD, All and singular the premises herein before-mentioned, or intended, to be hereby granted, released, or confirmed, with their, and every of their, rights, members, and appurtenances, unto the said B, his executors, administrators, and assigns, from henceforth, for and during all the rest and residue of the said term of five hundred years, by the said first recited indenture granted, yet to come and unexpired, freed and discharged of, and from all, and all manner of, former and other provisos, conditions, covenants, and agreements, whatsoever, for the redemption of the premises, or any part thereof, in any wise howsoever; PROVIDED always, And the said B for himself, his executors, administrators, and assigns, Doth hereby covenant and agree, to and with the said A, his heirs and assigns, That if he or they do well and truly pay, or cause to be paid, unto the said B, his executors, administrators, or assigns, the full and just sum of ———, of lawful money of Great Britain, on the ——— day of ———, next ensuing the date hereof, at or in the dwelling-house of ———, without any deduction or abatement for taxes, or otherwise howsoever, Then, he, the said B, his executors, administrators, and assigns, shall and will, upon, or at any time after, such payment duly made, at the request, cost, and charges, of the said A, his heirs or assigns, surrender, or release, to him, or them, the said first recited indenture of demise, and all and singular the premises thereby granted, and all the estate, right, title, interest, claim, and demand, whatsoever, of him, the said B, his executors, administrators, or assigns, of, in, or to, the same, by virtue of the said recited indenture of demise, or the said recited indenture of release and confirmation, or of this present indenture, or otherwise howsoever: AND the said A, for himself, his heirs, executors, and administrators, and for every of them, Doth covenant, promise, and agree, to and with the said B, his executors, administrators, and assigns, or some of them, by these presents, That he, the said A, his heirs, executors, administrators, and assigns, or some of them, shall and will, well and truly pay, or cause to be paid, unto the said B, his executors, administrators, or assigns, the said sum of ———, of lawful money of Great Britain, on the ——— day of ———, next ensuing the date hereof, at or in the dwelling-house of ———, as aforesaid, without any deduction or abatement whatsoever; And that in case any default shall happen to be made in payment of the said sum of ———, on the day and in manner and form

aforesaid, He, the said A, his heirs and assigns, and all other persons having, or lawfully claiming, any estate or interest, of, in, to, or out of, the said mortgaged premises, or any part or parcel thereof, shall and will, upon the request and at the costs and charges of the said B, his executors, administrators, or assigns, from time to time, and at all times thereafter, make, do, and execute, or cause or procure to be made, done, and executed, all, and every such farther and other, acts, conveyances, and assurances in the law, whatsoever, for the farther, better, and more absolute conveying and assuring the said messuage, farm, lands, tenements, and hereditaments, and all and singular other the premises, with the appurtenances, unto the said B, his executors, administrators, and assigns, for and during all the rest and residue of the said term of five hundred years, which shall be then to come and unexpired; as by the said B, his executors, administrators, or assigns, or his or their counsel learned in the law, shall be reasonably devised, advised, or required: And lastly, the said B, for himself, his executors, administrators, and assigns, Doth hereby covenant, promise, and agree, to and with the said A, his heirs and assigns, that until default shall happen to be made in payment of the said sum of ———, or some part thereof, he, the said A, his heirs and assigns, shall and may, peaceably and quietly, have, hold, use, occupy, possess, and enjoy, the said messuage, farm, lands, tenements, and hereditaments, and all and singular other the premises, with their, and every of their, appurtenances, without any lawful let, suit, trouble, denial, eviction, ejection, or interruption, of or by the said B, his executors, administrators, or assigns, or any other person or persons whomsoever, lawfully claiming or to claim, by, from, or under him, or them, or any of them, in any wise howsoever. IN WITNESS whereof, the parties aforesaid to these presents, their hands and seals have hereunto set, the day and year first above-written.

Signed, sealed, and delivered,
 (being first duly stamped,)
 in the presence of

No. IV.

*A Mortgage by Demise.**

THIS INDENTURE, made the — day of —, in the year of our Lord —, between A of —, Esquire, of the one part, and B of —, Esquire, of the other part, WITNESSETH, That for, and in consideration of, the sum of five hundred pounds of lawful money of Great Britain, to the said A in hand paid by the said B, at and before the sealing and delivering of these presents, the receipt whereof, he the said A, doth hereby acknowledge, and thereof, and of every part thereof, doth acquit, release, and discharge the said B, his executors, administrators, and assigns, and every of them, for ever by these presents, He, the said A, hath granted, bargained, sold, and demised, and by these presents doth grant, bargain, sell, and demise, unto the said B, his executors, administrators, and assigns, All that —, and —, of him, the said A, with their, and every of their, rights, members, and appurtenances, situated, lying, and being, in —; Together with all ways, waters, easements, privileges, profits, commodities, advantages, emoluments, hereditaments, and appurtenances, whatsoever, to the said —, and —, and premises, or any of them, belonging, or in any wise appertaining, or therewith used, occupied, possessed, or enjoyed; And the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part and parcel thereof; To HAVE and to HOLD the said —, and —, and all and singular other the premises, with their, and every of their, appurtenances, unto the said B, his executors, administrators, and assigns, from the day next before the day of the date of these presents, (*or*, from the day of the date hereof,) for and during the full time and term, and until the full end and term, of one thousand years, from thence next ensuing, and fully to be completed and ended, without impeachment of, or for, any manner of waste; YIELDING and paying therefore, the rent of a pepper-corn, on the feast-day

Consideration.

Habendum.

Reddendum.

* See Observations on Estates upon Condition, Sect. 8, 10.

of Saint Michael the Archangel, in every year, if the same shall be lawfully demanded: PROVIDED always, and upon this condition nevertheless, that if the said A, his heirs, executors, or administrators, shall and do well and truly pay, or cause to be paid, unto the said B, his executors, administrators, or assigns, at or in the Tontine Coffee-house in Glasgow, the full and just sum of five hundred and ten pounds, of lawful money of Great Britain, upon the — day of — next ensuing the date hereof, without any deduction, defalcation, or abatement, out of the same, or any part thereof, for, or in respect of, any taxes, charges, assessments, payments, or other matter, cause or thing, whatsoever, taxed, charged, or imposed, upon the premises, or any of them, or upon the said B, his executors, administrators, and assigns, or any of them, for or in respect thereof, by authority of Parliament, or otherwise howsoever; then, and in such case, and at all times from thenceforth, these presents, and the term and estate hereby granted, and every clause and sentence herein contained, shall cease, determine, and be utterly void, to all intents and purposes, any thing herein contained to the contrary notwithstanding. AND the said A, Doth hereby for himself, his heirs, executors, and administrators, covenant, promise, grant, and agree, to and with the said B, his executors, administrators, and assigns, in manner following, (that is to say,) That he, the said A, his executors or administrators, shall and will well and truly pay, or cause to be paid, unto the said B, his executors, administrators, or assigns, the said sum of five hundred and ten pounds, at such time and place, and in such manner and form, as are herein before-mentioned for the payment thereof, without any deduction, or abatement, out of the same, or any part thereof, for taxes, or otherwise, as aforesaid, according to the purport of the aforesaid proviso, and the true intent and meaning of these presents: And also, that he, the said A, is and standeth lawfully and rightfully seized, in his demesne as of fee, of and in the said —, and —, of a good, sure, lawful, absolute, and indefeasible estate of inheritance in fee-simple, to him, and his heirs, without any reversion, or remainder, trust, limitation, power of revocation, use or uses, or any other matter, restraint, or thing, whatsoever, to alter, change, charge, revoke, make void, lessen, encumber, or determine, the same: And also, that he, the said A, hath, at the time of sealing and delivering hereof, in himself, good right, full power, and lawful and absolute authority, to grant and demise the said —, and —, and premises, with their

Proviso to be
void on pay-
ment.

Covenants
For payment.

That the mort-
gager is lawfully
seized.

Hath power to
demise.

That in default
of payment, the
mortgagee may
enter and enjoy.

Free from en-
cumbrances.

For farther as-
surance after de-
fault in pay-
ment.

appurtenances, unto the said B, his executors, administrators, and assigns, for and during the said term of one thousand years, as aforesaid, according to the purport, true intent, and meaning of these presents. And farther, that it shall and may be lawful, to and for the said B, his executors, administrators, and assigns, from time to time, and at all times, from and after default shall happen to be made of, or in payment of, the said sum of five hundred and ten pounds, or any part thereof, contrary to the form and effect of the aforesaid proviso and covenant for payment of the same, peaceably and quietly to enter into, have, hold, occupy, possess, and enjoy, the said ———, and ———, and premises, and to receive and take the rents and profits thereof, and of every part thereof, for and during all the residue which shall be then to come and unexpired, of the said term of one thousand years, without the lawful let, suit, trouble, denial, eviction, or interruption, of, or by, the said A, his heirs or assigns, or of, or by, any other person or persons whomsoever, and THAT free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise by the said A, his heirs, executors, or administrators, well and sufficiently saved, kept harmless, and indemnified, of, from, and against, all, and all manner of, former and other gifts, grants, bargains, sales, leases, mortgages, estates, titles, troubles, charges, and encumbrances, whatsoever, had, made, done, committed, or suffered, or to be had, made, done, committed, or suffered by the said A, his heirs or assigns, or by any other person or persons whomsoever. And moreover, That he, the said A, and his heirs, and all and every other person and persons, having and lawfully claiming, or who shall or may have or claim, any estate, right, title, trust, or interest, of, in, to, or out of, the said ———, and ———, and premises, or any of them, or any part thereof, shall and will, from time to time, and at all times, from and after default shall happen to be made of, or in payment of, the said sum of five hundred and ten pounds, or any part thereof, contrary to the form and effect of the aforesaid proviso and covenant for payment of the same, on every reasonable request, at the proper cost and charges in the law, of the said B, his executors, administrators, or assigns, make, do, and execute, or procure to be made, done, and executed, all, and every such, farther and other, lawful and reasonable, acts, deeds, and things, devices, conveyances, and assurances in the law, whatsoever, for the farther, better, more perfect and absolute granting, conveying, and assuring, of all and singular the said ———, and

_____, and premises, with their appurtenances, unto the said B, his executors, administrators, and assigns, for and during all the residue which shall be then to come, of the said term of one thousand years, without impeachment of waste, discharged of the aforesaid proviso for redemption of the premises, or any equity thereupon, as by the said B, his executors, administrators, or assigns, or his, or their, counsel learned in the law, shall be reasonably advised, or devised and required. And it is hereby declared and agreed, by and between the said parties to these presents, that in the mean time, and until default shall happen to be made of, or in payment of, the said sum of five hundred and ten pounds, or some part thereof, contrary to the form and effect of the aforesaid proviso and covenant for payment of the same, it shall and will be lawful to and for the said A, and his heirs, peaceably and quietly to have, hold, and enjoy, all and singular the said _____, and _____, and premises; And to receive and take the rents and profits thereof, and of every part thereof, to and for his and their own use and benefit, without the lawful let, suit, trouble, and interruption, of, or by, the said B, his executors, administrators, or assigns, or of, or by, any other person or persons lawfully claiming, or to claim, from, by, or under, him or them, or any of them. IN WITNESS whereof, &c.

That, until default in payment, the mortgagee may enjoy.

** Mortgage of Copy-hold Premises by Surrender.*

No. V.

Manor of _____, }
county of _____, } **M**EMORANDUM, That on the _____
day of _____, in the year of our Lord _____, A of _____, &c.
one of the customary tenants of the manor aforesaid, did, out of
court, surrender by the rod, into the hands of the Lord of the said
manor, by the hands and acceptance of C of _____, Esquire,
deputy steward of the said manor, according to the custom of the

* See Observations on Estates upon Condition, Sect. 12.

faid manor, ALL that ———, which faid ———, and pre-
 mises, are held of the manor aforesaid by copy of court-roll; To-
 gether with all ways, waters, water-courses, commons, profits, and
 commodities, whatsoever, to all and singular the said premises be-
 longing, or in any wise appertaining; and the reversion and reversions,
 remainder and remainders thereof, and of every part and parcel
 thereof, to the use and behoof of B of ———, Esquire, his heirs
 and assigns for ever, on the condition following, that is to say, PRO-
 VIDED always, and upon condition nevertheless, that if the said A,
 his heirs, executors, or administrators, do and shall well and truly
 pay, or cause to be paid, unto the said B, his executors, admini-
 strators, or assigns, the sum of ———, of lawful money of Great
 Britain, upon the ——— day of ———, now next ensuing, which
 will be in the year of our Lord ———, without any deduction or
 abatement out of the same, by reason of any taxes, or upon any ac-
 count whatsoever, then this present surrender shall be void and of no
 effect, or else shall remain in full force and virtue.

No. VI. *An Endorsement on a Mortgage Deed, charging the Lands
 with a farther Sum.*

WHEREAS, the within-named B, hath on the day of the
 date of these presents, advanced and lent unto the within-named A,
 the farther sum of one hundred pounds; NOW THESE PRE-
 SENTS WITNESS, That for, and in consideration of, the said
 sum of one hundred pounds, of lawful money of Great Britain, to
 the said A in hand, well and truly paid by the said B, at, or imme-
 diately before, the sealing and delivering of these presents, the re-
 ceipt whereof the said A doth hereby acknowledge, and thereof, and
 of every part and parcel thereof, doth acquit, release, and discharge
 the said B, his heirs, executors, administrators, and assigns, for ever
 by these presents; HE the said A, for himself, his heirs, executors
 administrators, and assigns, Doth covenant, promise, and grant, to
 and with the said B, his executors, administrators, and assigns, by

these presents, that all and singular the lands, tenements, and hereditaments, mentioned and comprised in the within-recited indentures of lease and release, bearing date, respectively, the — and — days of —, and every part and parcel of them, and every of them, with their, and every of their, appurtenances, shall from henceforth stand, remain, and be charged and chargeable with, and be a security to the said B, his executors, administrators, and assigns, for, the payment of the said farther sum of one hundred pounds now lent, with the lawful interest for the same, on the — day of — now next ensuing, and which will be in the year of our Lord —; and shall not be redeemed or redeemable, until, as well the said sum of one hundred pounds, now lent, with interest for the same as aforesaid, as also, the sum of one thousand pounds, secured by the said indenture of release, and the sum of five hundred pounds, secured by endorsement, dated the — day of —, on the back of the said release, and also, the sum of one hundred pounds, secured by one other endorsement, dated the — day of —, made on the back of the said indenture of release, and all interest due for the said sums, respectively, shall be fully paid and satisfied unto the said B, his executors, administrators, and assigns, any thing in the said recited indenture of release, endorsements, or any of them, to the contrary thereof, in any wise notwithstanding: And the said A, for himself, his heirs, executors, administrators, and assigns, doth covenant, promise, and agree, to and with the said B, his executors, administrators, and assigns, by these presents, That he, the said A, his executors, administrators, or assigns, shall and will, well and truly pay, or cause to be paid, unto the said B, his executors, administrators, or assigns, the said sum of one hundred pounds, of lawful money of Great Britain, now lent, with lawful interest for the same, on the said — day of —, now next ensuing, without any deduction or abatement whatsoever out of the same, for, or on account of, taxes or other things whatsoever. IN WITNESS, &c.

Note, For a Precedent of a Mortgage of Lease-hold Premises, See Assignments, No. 7.

P A R T I T I O N.

** A Partition or Division of Lands in Fee-simple, between the Owners.*

THIS INDENTURE, made, &c. between A of ———, &c. of the one part, and B of ———, &c. of the other part, WITNESSETH, THAT WHEREAS the said A and B, by good and lawful conveyances, are, and stand, seized of ALL that ———, and other the premises, with their appurtenances, to them and their heirs for ever, that is to say, the said A, is, and standeth, seized of one moiety thereof, and the said B of the other moiety thereof, by good and perfect estates in fee-simple; IT is covenanted, granted, concluded, and agreed, by and between the said A and B, and the said A and B, each for himself, covenants, grants, and agrees, to and with the other, and his heirs and assigns, severally and respectively, by these presents; That a partition is, and shall be made, of ALL that ———, and other the premises, with the appurtenances afore-said, in manner and form following, that is to say, That he the said A, shall and may, from henceforth, have, hold, possess, occupy, and enjoy, in severalty, by himself, to himself, to him and his heirs and assigns for ever, ALL that ———, abutting, &c. containing, &c. And that the said B, shall and may, from henceforth, have, hold, possess, occupy, and enjoy, in severalty, by himself, to himself, to him and his heirs and assigns for ever; ALL that ———: And the said A, for himself, his heirs, executors, and administrators, and every of them, Doth covenant and grant, to and with the said B, his heirs and assigns, and to and with every of them by these presents, that he, the said A, his heirs and assigns, and all and every other person and persons whomsoever, having, or lawfully claiming, or who shall, or may, at any time or times hereafter, have, or lawfully claim, any estate, right, title, or interest, of, in, or to, the said

* See Observations on the several species of English Deeds, Sect. 20.

premises hereby allotted to the said B, or of, in, or to, any part or parcel thereof, shall and will from time to time, and at all times hereafter, upon the reasonable request, and at the costs and charges in the law, of the said B, his heirs and assigns, or some of them, make, do, levy, execute, acknowledge, and suffer, or cause to be made, done, acknowledged, executed, and suffered, all, and every such, farther and other, reasonable act and acts, thing and things, devices and assurances, conveyance and conveyances in the law, whatsoever, for the better and more perfect assuring and conveying, settling, establishing, or confirming the said ———, hereby allotted, or mentioned to be hereby allotted, or any part or parcel thereof, with their, and every of their, appurtenances, unto the said B, his heirs and assigns, according to the purport, true intent, and meaning of these presents, as by the said B, his heirs or assigns, or by his, their, or any of their, counsel learned in the law, shall be reasonably devised, advised, or required; so as the said farther assurances to be made, or any of them, do not, and shall not, contain any farther assurance, or warrant, than for enjoying them only against the said A, and his heirs, and touching acts and deeds, done and suffered by them, or any of them: And that he, the said A, at the time of making the partition and division aforesaid, is, and shall, and will, until the full perfection and good assurance thereof, unto the said B, and his heirs, stand and be lawfully seized in his demesne as of fee, of one moiety of the said ———, without any condition, or defeasance, whatsoever: And that he hath good right, lawful and absolute power and authority in himself, to make the aforesaid partition, or division, according to the true intent and meaning of these presents: And also, that all that ———, hereby allotted to the said B, and his heirs, as aforesaid, now are (*free from encumbrances.*) And that the said B, and his heirs and assigns, and every of them, may peaceably, &c. (*covenant for peaceable enjoyment. See these covenants in conveyances by lease and release.*) And the said B, for himself, &c. covenants, &c. (*the same covenants on the part of B.*) IN WITNESS whereof the said A and B, have hereunto set their hands and seals, the day and year first before-written.

Signed, sealed, and delivered,
 (being first duly stamped,) }
 in the presence of E.
 F.

A.



B.



R E C E I P T S.

RECEIVED, the day of the date within (*or above*) written, from the within (*or above*) named B, the sum of _____ pounds, of lawful money of Great Britain, being the consideration within (*or above*) mentioned.

A.

WITNESS,

C.

D.

Another.

WE the within (*or above*) named A, and B wife of the said A; C, and D wife of the said C; Do hereby severally acknowledge to have received, on the _____ day of _____, being the day of the date of the within (*or above*) written indenture, from the within (*or above*) named F, the several sums of _____, and _____, &c. according as the same is mentioned to be paid to us, severally, by the within (*or above*) indenture, being the full consideration for the premises thereby conveyed; we say received,

A.

&c.

WITNESS,

G.

H.

Another.

RECEIVED, the day and year within (*or above*) written, of the within (*or above*) named B, the sum of ———, which, with the sum of ———, secured as in and by the within (*or above*) written indenture is expressed, is in full for the absolute purchase of the within (*or above*) mentioned premises; I say received by me,

A.

WITNESS,
&c.

Note, There should be a Receipt endorsed on, or written under, every Deed for the real consideration paid. The considerations of five and ten shillings are merely nominal.——Receipts need not be sealed.

R E - C O N V E Y A N C E.

*A Re-conveyance, of an Estate Mortgaged in Fee, to
the Heir of the Mortgager, by Lease and Release.*

*Release.**

THIS INDENTURE, tripartite, made, &c, between A of ———, &c. of the first part, B of ———, &c. of the second part, and C of ———, &c. brother and heir of D, late of ———, deceased, of the third part. WHEREAS the said D having borrowed of the said B, the sum of five hundred pounds, did, for securing the re-payment thereof, with interest for the same, after the rate of five pounds per centum per annum, enter into, and execute unto the said B, one certain bond or obligation, bearing date the ——— day of ———, in the penal sum of one thousand pounds, conditioned for the payment of five hundred pounds, as therein is mentioned; AND WHEREAS by indentures of lease and release, bearing date, &c. the release being tripartite, and made, or mentioned to be made, between the said D, and E his wife, since deceased, of the first part, the said B of the second part; and the said A of the third part, for the better securing payment of the said sum of five hundred pounds, and interest, and in discharge of the said bond or obligation so entered into by the said D as aforesaid, and for, and in consideration of, the sum of five shillings to him in hand paid by the said A; He, the said D, did grant, &c. unto the said A, his heirs and assigns, ALL that ———, to the only proper use and behoof

* See Conveyances by Lease and Release, for form of a Lease for a year.

of the said A, his heirs and assigns for ever; subject nevertheless, to a proviso or condition of redemption, upon payment by the said D, of the sum of five hundred pounds, and interest, as therein is contained, as in and by the said indenture of release, relation being thereunto had, will more fully appear: which said sum and interest not being paid, the estate and interest of him the said A, of, and in, the said ———, and premises, became absolute at law: AND WHEREAS by the decease of the said D, the right and equity of redemption of the said premises, is now vested in the said C, as heir of the said D, who has agreed to pay up and satisfy the said debt of five hundred pounds, and interest; NOW THIS INDENTURE WITNESSETH, That in consideration of the sum of five hundred and seventy five pounds, of lawful money of Great Britain, to the said B in hand, well and truly paid by the said C, being in full for the aforesaid sum of five hundred pounds, and interest thereon to this date, the receipt whereof the said B doth hereby acknowledge, and thereof, &c. doth acquit, &c. and in further consideration of the sum of ten shillings, of like money, to the said A in hand also paid by the said C, the receipt whereof is hereby acknowledged, HE, the said A, by the express direction and appointment of the said B, testified by his being a party to and signing these presents, HATH bargained, sold, alienated, released, and confirmed, and by these presents doth grant, bargain, sell, alienate, release, and confirm, unto the said C, (in his actual possession now being, by virtue of a bargain and sale to him thereof made by the said A and B, in consideration of five shillings, by indenture bearing date the day next before the day of the date of these presents, for one whole year commencing from the day next before the day of the date of the said indenture of bargain and sale, and by force of the statute made for transferring uses into possession) and to his heirs and assigns, ALL that ———, in and by the said recited indentures granted to the said A, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part and parcel thereof, and all the estate, right, title, interest, use, trust, property, possession, claim, and demand, whatsoever, of him the said A, of, in, to, or out of, the same: TO HAVE and to HOLD the said ———, and appurtenances, unto the said C, his heirs and assigns, to the only proper use and behoof of the said C, his heirs and assigns for ever; And the said A for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and

R E - C O N V E Y A N C E .

193

agree, to and with the said C, his executors, administrators, and assigns, that he, the said A, hath not done, committed, or willingly suffered, any act, matter, or thing, whereby, or by reason whereof, the said ———, and premises, or any part thereof, now are, or at any time hereafter shall or may be, impeached or encumbered, in title, charge, estate, or otherwise howsoever. IN WITNESS whereof, the said A, B, and C, have hereunto set their hands and seals, the day and year first before-written.

Signed, sealed, and delivered,
 (being first duly stamped,)
 in the presence of

H.
 I.

A.



B.



C.



B b



R E L E A S E S.

A general Release.

No. I.

KNOW ALL MEN by these presents, That I, A of ———, &c. Have remised, released, and for ever discharged, B of ———, &c. his heirs, executors, and administrators, of and from all, and all manner of, action and actions, cause and causes of action, suits, debts, dues, sum and sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, damages, judgments, extents, executions, claims and demands, whatsoever, in law, and in equity, which against the said B, I ever had, now have, or which I, my heirs, executors, or administrators, hereafter can, shall, or may have, for, upon, or by reason of, any matter, cause, or thing, whatsoever. IN WITNESS whereof, I have hereunto set my hand and seal, the ——— day of ———, in the year of our Lord ———.

Signed, sealed, and delivered,
(being first duly stamped,) }
in the presence of

C.
D.

A.

*To an Executor for a Legacy.*

No. II.

WHEREAS A of ———, deceased, in and by his last will and testament in writing, bearing date on or about the ——— day of ———, Did (amongst other legacies and bequests therein contained) give and bequeath unto me, B of ———, &c. the sum of ———,

B b 2

and made and constituted C of ———, &c. and D of ———, &c. executors of his said last will and testament: NOW KNOW ALL MEN by these presents, That I, the said B, do hereby confess and acknowledge, that I have had, and received, of the said C and D, the said sum of ———, to me left and bequeathed by the said A; And therefore, I do by these presents acquit, release, and discharge the said C and D, of and from the said legacy of ———, and all dues, duties, and demands, whatsoever, which I, my executors or administrators, may have, claim, challenge, or demand, of or against them, or either of them, by virtue of the last will and testament of the said A, deceased. IN WITNESS, &c.

No. III.

Another, to an Executor in Trust.

WHEREAS A of ———, deceased, in and by his last will and testament in writing, did give, devise, and bequeath, unto C of ———, (whom he appointed executor of the said will,) all his personal estate in trust, that the said C, should pay unto me, B of ———, his only child, ——— pounds per annum, by quarterly payments, 'till I should attain the age of twenty-one years, or marry; and then that I should enjoy the profits of the remainder of his estate, as in and by the said will, relation being thereunto had, may more fully and at large appear. AND WHEREAS the said C, did accept of the said executorship and trust, and hath made up an account with me the said B, of all the monies received and paid by the said C, and of all his transactions in pursuance of the said executorship and trust; and hath paid to me the balance of such accounts, and delivered to me all the writings, and papers belonging to the estate of the said A; NOW KNOW ALL MEN by these presents, That I, the said B, having now attained the age of twenty-one years, and being fully satisfied with the account rendered to me by the said C, and with all his transactions in pursuance of the said executorship and trust, Have remised, released, and for ever dis-

charged, and do hereby remise, release, and for ever discharge the said C, his executors and administrators, of and from all reckonings, accounts, and sums of money, by him had or received, in pursuance of the said will or trust, or by means of his being executor of the will and testament of the said A, and of, and from, all other reckonings, accounts, and demands, whatsoever. IN WITNESS whereof, &c.

A Release of Equity of Redemption on a Mortgage.

No. IV.

WHEREAS A of ———, &c. by his indenture of lease, bearing date the ——— day of ———, which was in the ——— year of the reign, &c. &c. did demise to B of ———, &c. ALL that ———, situated, lying, and being, in ———, TO Hold to him the said B, his executors, administrators, and assigns, for the term of ——— years, if he the said B, C, his wife, and D his son, should so long live: AND WHEREAS the said B, by indenture, dated the ——— day of ———, mortgaged the said premises, to E of ———, now deceased, for the residue of the said term, for securing ——— pounds, and interest: AND WHEREAS F of ———, by the decease of the said E, is become lawfully entitled to the said mortgaged premises, and monies thereby secured: AND WHEREAS the said B, and D his son, are since dead, whereby the said C is entitled to the equity of redemption of the said mortgaged premises: AND WHEREAS neither the said principal sum of ———, nor the interest thereof, hath been paid, so that there is more money due on the said security, than the said mortgaged premises are worth; NOW KNOW ALL MEN by these presents, That the said C, in consideration of the premises, and of five shillings to her in hand paid by the said F, the receipt whereof is hereby acknowledged, Hath remised, released, and for ever quitted claim, and by these presents doth, for herself, her executors, administrators,

and assigns, remise, release, and for ever quit claim, unto the said F, all the estate, right, title, interest, equity of redemption, property, claim, and demand, which she, the said C, hath, or can, or may, pretend to have in the said mortgaged premises, or any part thereof: AND the said C, by these presents, doth for herself, her executors, administrators, and assigns, covenant with the said F, his executors, administrators, and assigns, That he, the said F, his executors, administrators, and assigns, shall and may, from time to time, and at all times hereafter, during the rest and residue of the said term of ——— years, peaceably and quietly, have, hold, and enjoy, all and singular the premises, with the appurtenances, to his and their proper use and benefit, without the let, suit, trouble, hinderance, molestation, or interruption, of the said C, her executors, administrators, or assigns, or of any person or persons whomsoever, claiming, or to claim, by, from, or under her, or by, from, or under B, and D, her late husband and son, deceased. IN WITNESS, &c.

Signed, sealed, &c.

No. V.

Of a Bond lost or mislaid.

TO ALL TO WHOM these presents shall come, I, A of ———, &c. send greeting; WHEREAS B of ———, &c. and C of ———, &c. by their bond or obligation, bearing date, &c. (*recite the bond,*) as by the said obligation and condition thereunder written, relation being thereunto had, may more fully and at large appear. AND WHEREAS the sum of ———, mentioned in the said bond, with all interest for the same, is well and truly satisfied and paid unto me the said A, in full discharge of the said recited obligation: AND WHEREAS the said obligation is lost, or mislaid, so that it cannot be delivered up to be cancelled: NOW KNOW ALL MEN by these presents, That I, the said A, for the considerations aforesaid, have remised, released, and quitted claim, and by these presents do, for me, my executors, and admini-

strators, remise, release, and for ever quit claim, unto the said B and C, their, and each and every of their, heirs, executors, and administrators, the said recited obligation, and all such sums of money as are therein-mentioned to be due and payable unto me the said A, my executors, administrators, or assigns; And also, all actions, suits, cause and causes of action, accounts, debts, reckonings, sums of money, judgments, executions, and demands, whatsoever, which I, the said A, now have, or which I, my executors, administrators, or assigns, or any of us, can or may have, for or against the said B and C, or any of them, their, or any of their, executors, administrators, or assigns, for, or by reason of, the said recited obligation, or any other matter, cause, or thing, whatsoever, concerning the same. IN WITNESS, &c.

Of an Executorship.

No. VI.

TO ALL TO WHOM these presents shall come, A of ———, &c. sends greeting: WHEREAS B of ———, deceased, did duly make and publish his last will and testament, dated on or about the ——— day of ———, and thereof constituted C his wife and the said A executors, as by the said last will and testament, relation being thereunto had, may more fully and at large appear: NOW KNOW YE, That the said A, for divers good causes and considerations him hereunto moving, Hath renounced and released, and by these presents doth renounce and release, the said executorship, and doth refuse and disclaim to take upon him the burden of the said executorship, or the probate of the said will: And farther, the said A, for himself, his executors and administrators, Doth covenant and grant, to and with the said C, widow of the said B, her executors and administrators, That he, the said A, shall not, nor will henceforth, intermeddle with the said executorship, or any of the estate of the said B, nor do any act or thing whatsoever by virtue of the said executorship, or as executor of the said B. IN WITNESS, &c.

No. VII.

* *Of Title to Lands.*

TO ALL, &c. KNOW YE, That A of ———, &c. for divers good causes and considerations him hereunto moving, Hath remised, released, and for ever quitted claim, and by these presents for himself, and his heirs, doth fully, clearly, and absolutely, remise, release, and for ever quit claim, unto B of ———, &c. in his full and peaceable possession and seizin now being, and to his heirs and assigns for ever, All such right, estate, title, interest, and demand, whatsoever, as he, the said A, had, or ought to have, if these presents had never been made, of, in, or to, All that ———, by any ways or means whatsoever: To HAVE and to HOLD the said ———, unto the said B, his heirs and assigns, To the only use and behoof of the said B, his heirs and assigns for ever; So that neither he, the said A, nor his heirs, nor any other person or persons for him or them, or in his name, or their names, or in the name, right or stead, of any of them, shall or will, by any ways or means, hereafter have, claim, challenge, or demand, any estate, right, title, or interest, of, in, or to, the said premises, or any part or parcel thereof, but from all and every action, right, estate, title, interest, or demand, of, in, or to, the said premises, or any part thereof, they, and every of them, shall be utterly excluded and barred for ever by these presents: And the said A, for himself, his heirs and assigns, Doth covenant and agree, to and with the said B, his heirs and assigns, That he, the said A, and his heirs, and all and every other person and persons, and his and their heirs, any thing having, or claiming, in the said premises, above-mentioned, or any part thereof, by, from, or under him, shall and will, from time to time, and at all times hereafter, upon the reasonable request, and at the proper costs and charges in the law of the said B, his heirs or assigns, make,

* See Observations on the several species of English Deeds, Sect. 22.

R E L E A S E S.

201

do, and execute, or cause to be made, done, and executed, all, and every, such farther and other, lawful and reasonable, act and acts, thing and things, device and devices in the law, whatsoever, for the farther, better, and more perfect, granting, conveying, and assuring, of all and singular the said premises, above-mentioned, with their appurtenances, unto the said B, his heirs and assigns, for ever, as by the said B, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably devised, or advised and required. IN WITNESS, &c.

Signed, sealed, &c.

C c

S U R R E N D E R S.

* *A Surrender of a Lease, to the Widow and Executrix of the Lessor.*

TO ALL TO WHOM these presents shall come, B of ———, &c. sends greeting; WHEREAS by indenture of lease, bearing date the ——— day of ———, and made, or mentioned to be made, between A of ———, &c. of the one part, and the said B of the other part, he, the said A, for the considerations therein-mentioned, did demise, and to farm let, unto the said B, All that ———, to hold unto the said B, &c. as in and by the said lease, relation thereunto being had, will more fully and at large appear; NOW THIS INDENTURE WITNESSETH, That the said B, for, and in consideration of, the sum of ———, to him in hand well and truly paid by C, widow and sole executrix of the said A, the receipt whereof is hereby acknowledged, Doth hereby for himself, his executors and administrators, surrender and yield up, from the day of the date hereof, unto the said C, her executors and administrators, as well the said indenture of lease, and term of years thereof yet to come, as all the said ———, and premises, with all the right, title, and interest, of him, the said B, of, in, or to, the same, or to any part thereof, or which he may or can claim thereto, by virtue of the said lease, or otherwise howsoever: and THAT, free and clear, and freely and clearly acquitted, exonerated, and discharged, of, and from, all and all manner of encumbrances, whatsoever, had, made, done, or wittingly or willingly suffered, or to be had, made, done, committed, or wittingly or willingly suffered, by him the said B, or by, through, with, or under, his act, means, consent, privity, neglect, default, or procurement. IN WITNESS whereof, the said B has hereunto set his hand and seal, the ——— day of ———, in the year of our Lord ———.

No. 1.

B.



Signed, sealed, and delivered, }
 (being first duly stamped,) } D.
 in the presence of } E.

* See Observations on the several species of English Deeds, Sect. 25.

No. II.

Surrender of a Mortgage, where the Mortgaged Premises have been Sold, and the Mortgagee paid his principal and interest out of the Price, &c.

(By Endorsement.)

WHEREAS, the within-named B, hath lately sold and conveyed to C of ———, &c. and his heirs, the ———, and hereditaments within-mentioned, situated, &c. and by, and out of, the purchase money arising by such sale, hath fully paid off, and satisfied to the within-named A, all principal monies and interest due and owing upon the within-written mortgage, the receipt whereof, he, the said A, doth hereby acknowledge: AND WHEREAS upon such sale and conveyance, he the said A, did at the request, and by the direction and appointment, of the said B, assign and transfer the said ———, and premises, unto a trustee named by the said C, his executors, administrators, and assigns, for and during all the rest, residue, and remainder, of the within-mentioned term of one thousand years, IN TRUST for the said C, and his heirs, to attend and wait upon the freehold and inheritance of the same premises; NOW KNOW ALL MEN by these presents, That, in consideration of the sum of five shillings, of lawful money of Great Britain, to the said A in hand, paid by the said B, at, or immediately before, the sealing and delivering of these presents, the receipt whereof is hereby acknowledged, He, the said A, hath surrendered and yielded up, and by these presents doth surrender and yield up, unto the said B, his heirs and assigns, all and every, the within-mentioned ———, and all the estate, right, title, interest, term and term of years yet to come and unexpired, claim and demand, whatsoever, both at law, and in equity, of him the said A, of, in, to, or out of, the same ———; To HAVE and to HOLD the said ———, unto the said B, his heirs and assigns for ever, to and for the only proper use and behoof of the said B, his heirs and assigns for ever, and for no other use, intent, or purpose, whatsoever: And the said A for himself, his heirs, executors, and admi-

nistrators, and for every of them, Doth hereby covenant and agree, to and with the said B, his executors, administrators, and assigns, and to and with every of them by these presents, That he, the said A, hath not done, committed, executed, or suffered, any act or acts, thing or things, whatsoever, whereby the said ———, and premises, or any part thereof, now are, or, at any time hereafter, shall or may be, impeached or encumbered, in title, charge, estate, or otherwise, howsoever. IN WITNESS, &c.

Signed, sealed, &c.

Another on Payment of the Mortgage-Money.

No. III.

(By Endorsement.)

KNOW ALL MEN by these presents, That for, and in consideration of, the sum of ———, of lawful money of Great Britain, to the within-named B, (*the mortgagee*) in hand, paid by the within-named A, (*the mortgager*) being in full of all principal monies, and interest, due to him, upon, or by virtue of, the within-written mortgage, at, or immediately before, the executing these presents, the receipt and payment of which said sum, the said B doth hereby acknowledge, and thereof doth acquit and discharge the said A, his heirs, executors, and administrators, for ever by these presents; He, the said B, hath granted, surrendered, and yielded up, and by these presents doth absolutely grant, surrender, and yield up, unto the said A, his executors, administrators, and assigns, ALL that ———, which, in and by the within-written indenture, were granted and demised to the said B, his executors, administrators, and assigns, for the term of ——— years; and all the estate, right, title, interest, term of years to come, property, claim, and demand, whatsoever, either at-law, or in equity, of him, the said B, of, in, or to, the within-mentioned and hereby assigned premises, or any part thereof; Together with the within-written indenture, and all such other deeds, writings, and evidences, as he, the said B, hath in his hands or power, relating to the title of the said premises; to

the intent, that the said term of ——— years, for and during all the residue and remainder thereof, may no longer continue or subsist, but may be for ever merged and extinguished, in the reversion of the said premises, and may in no wise be made use of to the prejudice, disadvantage, or interruption of any other uses, trusts, terms, or estates, already or hereafter to be limited, expressed, or declared, of and concerning the said hereditaments and premises: (*covenant, that surrenderer hath done no act to encumber, as in the foregoing precedent.*) IN WITNESS, &c.

Signed, sealed, &c.

No. IV.

Surrender of a Mortgage, by the Executor of the Mortgagee.

THIS INDENTURE, made the ——— day of ———, in the ——— year of the reign of our Sovereign, George the third, by the grace of God, of Great Britain, &c. and in the year of our Lord ———, between C of ———, executor of the last will and testament of A, late of ———, deceased, of the one part, and B of ———, of the other part: WHEREAS the said B, by indenture, bearing date, &c. (*here recite the mortgage;*) NOW THIS INDENTURE WITNESSETH, That the said C, for, and in consideration of, the sum of ———, to him in hand well and truly paid by the said B, at, or immediately before, the sealing and delivering of these presents, the receipt whereof, &c. and thereof, &c. hath granted, surrendered, and yielded up, and by these presents doth, &c. ALL that ———, and all the estate, &c. (*as in the foregoing precedent,*) TO HAVE and to HOLD the said ———, with their, and every of their, rights, members, and appurtenances, unto the said B, his heirs and assigns, for all such estate, term, and interest, as the said C hath or ought to have, of, in, and to, the same, as executor of the said A, deceased, by virtue of the said recited indenture of mortgage, or otherwise howsoever. (*Covenants that surrenderer hath done no act to encumber, and for farther assurance.*) IN WITNESS, &c.

Surrender of a Copy-hold Estate.

No. V.

Manor of ——. **B**E IT REMEMBERED, That on the — day of —, A of —, &c. came before me, and did furrender into the hands of the Lord of the manor aforesaid, ALL that —, within the said manor, now in the possession of him the said A, which he claimed to hold, for the term of his life, by copy of court-roll of the same manor, bearing date, &c. And all the estate, right, title, interest, claim, and demand, whatsoever, of him the said A, of, in, and to, the same; Together with the copy thereof to be cancelled; to the end the Lord of the manor aforesaid might therewith do his will.

B, steward there.

This surrender was made and }
taken in the presence of us }

C. }
D. } two customary tenants.

U S E S.

* *An Indenture to lead the Use of a Fine.*

No. 1.

THIS INDENTURE, made, &c. between A of ———, &c. of the one part, and B of ———, &c. of the other part, WITNESSETH, That it is covenanted, concluded, and agreed, by and between the said parties to these presents, and the said A, for herself, her heirs, executors, and administrators, Doth hereby covenant, promise, and agree, to and with the said B, in manner and form following; that is to say, That she, the said A, shall and will, before the ——— day of ——— next ensuing the date hereof, at her own proper costs and charges in the law, acknowledge and levy in due form of law, before the Justices of his Majesty's court of Common Pleas at Westminster, one fine *sur cognizance de droit come ceo*, &c. with proclamations according to the form of the statute in that case made and provided, OF ALL that ———, called or known by the name of ———, and abutting in manner following, that is to say, by such names, qualities, quantities, number of acres, and particular species, as lands, meadows, pasture, &c. as in the said fine shall be mentioned, and thereby acknowledged to be the right of the said B, as that which the said B hath of the grant of the said A; And that the said fine so to be levied, and the execution thereupon to be had or taken, shall be to the only use and behoof of the said B, his heirs and assigns, and not to any other use or uses, whatsoever. IN WITNESS whereof, the said A and B, have hereunto set their hands and seals, the ——— day of ———, in the year of our Lord ———.

Scaled and delivered, (being
first duly stamped,) in the
presence of

C.
D.

A.



B.



* See Observations on Alienation by matter of Record, Sect. 45, 46.

No. II.

* *An Indenture to lead the Uses of a Recovery.*

THIS INDENTURE, quadrupartite, made the — day of —, &c. between A of —, &c. of the first part, B of —, &c. of the second part, C of —, &c. of the third part, and D of —, &c. of the fourth part, WITNESSETH, That, for divers good causes and considerations them thereunto moving, It is covenanted, concluded, and agreed, by and between all the said parties to these presents, and each of them doth hereby covenant, promise, conclude, and agree, to and with the others of them, in manner following; that is to say, That he, the said C, on or before the — day of — next ensuing, shall and will purchase and sue forth, out of the High Court of Chancery of the Sovereign the King, one original writ of entry, *sur disseizin en le post*, against the said A, returnable before the Justices, at a certain time to be mentioned in the said writ; and thereby shall demand against the said A, all the lands, &c. situated, lying, and being, in —, in the county of —, called or known by the name of —, or by whatsoever other name or names, the same hath been called or known, or accepted, reputed, deemed, taken or known, as part, parcel, or member thereof, or of any part thereof, containing by estimation, — acres in whole, whether more or less; And also, all and singular other the premises, with their, and every of their, rights, members, and appurtenances, in — afore said, which the said A lately bought, or had, of the gift or grant of the said B, by certain names, number of acres, and quantity of land, in the said writ to be mentioned and expressed; Unto which said writ, the said A shall appear *gratis*, and take upon him the tenancy of the said lands, tenements, and all and singular other the premises, with their, and every of their, rights, members, and appurtenances, and vouch to warranty the said B; who shall likewise

* See Observations on Alienation by matter of Record, Sect. 45. 46.

appear *gratis*, and afterwards shall depart in contempt of the court, So that judgment shall be given thereupon, That the said C shall recover the said lands, tenements, &c. in the said writ to be specified against the said A; and, That the said A shall recover in value against the said B; and that the said B shall recover in value against the common vouchee; And that execution of the said common recovery, so to be had, shall be made according to the form of common recoveries in such cases used: And farther, that the said C, and A, B, and the said common vouchee, and every of them, shall and will, make, do, acknowledge, execute, and suffer, all and every such act and acts, thing and things, whatsoever, as shall be requisite for the prosecution of the said recovery, and the execution thereupon, according to the form and course of common recoveries, with double voucher in such cases used. And it is farther covenanted, concluded, and agreed, by and between all the said parties to these presents, and each of them doth hereby covenant, grant, promise, conclude, and agree, to and with the other of them, as follows; That the said recovery, of all and singular the said ———, shall for ever, immediately from and after recovery had and executed, be and remain, and all and every person and persons, who now, or at any time, by virtue of the said recovery to be had, shall stand and be seized of the said premises, shall stand and be seized of all and singular the lands and tenements, &c. and other the premises aforesaid, and every part thereof, to the only use and uses hereafter mentioned and expressed, and not to any other use or uses, intents or purposes whatsoever; that is to say, To the use and behoof of the said D, for and during the term of his natural life, and from and after the determination of that estate, To the use and behoof of the said A, his heirs and assigns for ever, and not to any other use or uses, whatsoever. IN WITNESS whereof, &c.

Sealed and delivered, &c.

No. III.

** A Declaration of the Uses of a Fine and Recovery
already past.*

THIS INDENTURE, tripartite, made the — day of —, &c. between A of —, &c. of the first part, B his wife of the second part, and D of —, &c. and E of —, &c. of the third part: WHEREAS the said D and E, in Trinity-term last, did, by writ of entry, *sur disseizin en le poſt*, recover againſt the ſaid A, ALL that —, (*as in the recovery,*) as in and by the ſaid recovery, remaining of record in his Maſteſty's court of Common Pleas at Weſtminſter, reference being thereunto had, will more fully and at large appear: AND WHEREAS, (*recite the fine:*) NOW THIS INDENTURE WITNESSETH, That the true intent and meaning of the ſaid A, and of the ſaid recovery, and parties to the ſaid recovery, and of the cognizees of the ſaid fine, before and at the reſpective times of ſuffering the ſaid recovery, and levying the ſaid fine, touching and concerning the ſaid —, and premiſes, whereof the ſaid recovery and fine were reſpectively ſuffered and acknowledged, always was, and yet is, That, as well the ſaid recovery, as the ſaid fine, and all and every fine and fines, recovery and recoveries, and other acts and aſſurances, of and concerning the ſaid —, with the appurtenances, or any of them, at any time formerly ſuffered, levied, executed, or had, wherein, and whereunto, the ſaid A was, or is a party, and all and every the executions of the ſame, ſhould and ſhall be and enure, and are hereby covenanted, granted, agreed, and declared, to be and enure, to the uſes, purpoſes and intents, and under the proviſos, conditions, and limitations, hereafter in theſe preſents expreſſed, limited, and declared; And that the ſaid recoveries, and either of them, and all the parties in the ſaid recoveries, and takers thereby, and their heirs, and all other perſon and perſons, and his and their heirs, who now are, or then were, or hereafter ſhall be, ſeized of the ſaid —, comprized in the ſaid recovery, ſhould and ſhall ſtand and be ſeized

* See Obſervations on Alienation by matter of Record, Sect. 47.

of the said ———, comprised in the said recovery, and of every part and parcel thereof, with the appurtenances, to the uses, purposes, and intents, hereafter expressed; And that the said cognizees of the said fine, and either of them, and all the parties to the said fine, and the takers thereby, and the heirs of them, and every of them, and all and every other person and persons, and his and their heirs, who at the time of the levying the said fine were, or now are, or hereafter shall be, seized of the aforesaid ———, comprised in the said fine, should and shall stand and be seized of the said ———, comprised in the said fine, and of every part and parcel thereof, with the appurtenances, to the uses, purposes, and intents, hereafter in these presents expressed and declared; that is to say, For, touching, and concerning, the said ———, with the appurtenances, comprised in the said recovery; To the use, &c. (*recite the uses*,) And for, touching, and concerning, all and every the other ———, mentioned and comprised in the said recovery and fine, To the use, &c. (*recite the uses*.) IN WITNESS, &c.

Sealed and delivered, &c.

No. VI.

* *A Revocation of Uses.*

TO ALL to whom this present writing shall come, A of ———, &c. sends greeting; KNOW YE, That the said A, Hath, and by these presents, signed and sealed by him, in the presence of B, of ———, &c. C of ———, &c. and D of ———, &c. three credible witnesses, whose names are hereunder subscribed, DOTH revoke, determine, make void, and frustrate, all and every, the use and uses, estate and estates, mentioned, raised, created, and limited, in and by one deed-poll, (*or indenture of ———*,) bearing date the ——— day of ———, executed by (*or made between the*

* See Observations on the several species of English Deeds, Sect. 44.

faid A and E of _____,) the *faid A*, to *E of* _____, &c.
of and in the _____, with the appurtenances, in the *faid deed-*
poll (or indenture) mentioned, and of every part and parcel thereof:
And he, the *faid A*, Doth by these presents absolutely determine,
limit, and appoint, That all and singular the parties and persons in
the *faid deed-poll (or indenture)* mentioned, and their heirs and
assigns, shall immediately, and from henceforth, stand and be seized
of the *faid* _____, in the *faid deed-poll (or indenture)* mentioned,
and of and in every part and parcel thereof, To the only use and
behoof of him, the *faid A*, his heirs and assigns for ever, in a pure
and absolute estate of fee-simple. IN WITNESS whereof, he,
the *faid A*, hath to this writing, set his hand and seal, in the pre-
sence of the *faid B, C, and D*, this _____ day of _____, in the
year _____.

B.
C.
D.

A.



W I L L S.

* *A Will of Lands.*

No. I.

I, A of ———, &c. Do make this my last will: First, I give and devise unto B of ———, &c. all and every my messuages, lands, tenements, and hereditaments, with the appurtenances, whereof I am seized in fee, situated, lying, and being, in the county of ———: To HAVE and HOLD all and every the said messuages, lands, tenements, and hereditaments, with the appurtenances, to him, the said B, his heirs and assigns for ever.

I also give and devise to my son, C, all that my freehold land, lying in ———, to hold unto the said C, for the term of his life, and after his decease, to my grand daughter, D, her heirs and assigns for ever.

I Also give and devise unto E of ———, &c. all my copy-hold messuages, lands, tenements, and hereditaments, (and which I have surrendered to the use of my will,) situated, lying, and being, at ———, and which now are, or lately were, in the several tenures or occupations of ———, and ———, and ———, or one of them, their, or one of their, assigns, lessees, or under-tenants: To HAVE and to HOLD to the said E, and to the heirs of his body lawfully begotten, and in default of such heirs, then to the right heirs of me, the said A, for ever. IN WITNESS whereof, I have hereunto set my hand and seal, the ——— day of ———, in the year of our Lord ———.

A.



Signed, sealed, published, and declared by the testator, as and for his last will and testament, in the presence of us, who at his request, in his presence, and in the presence of each other, have subscribed our names as witnesses thereto,

F.

G.

H.

* See Observations on Alienation by Devise.

No. II.

* *A Will of Goods.*

IN the name of GOD, Amen, I, A of ———, &c. being mindful of my mortality, Do this ——— day of ———, in the year of our Lord ———, make and publish this my last will and testament, in manner following:

I desire to be decently and privately buried in the church-yard belonging to the parish in which I shall happen to die, without any funeral pomp, and with as little expence as may be; and I give and bequeath unto the poor of the same parish, the sum of ———, to be distributed in such proportions and manner as my executrix herein-after named, shall think fit.

ALSO, I give and bequeath unto B of ———, &c. the sum of ———.

ALSO, I give and bequeath unto C of ———, the sum of ———, to be paid unto them, respectively, so soon as one year after my decease shall be expired.

ALSO, I do forgive unto D of ———, &c. the sum of ———, out of the principal sum of ———, which he owes to me upon bond.

ALSO, I give to each of E and F, my grand-daughters, the sum of ———, to be paid to them, respectively, at their respective ages of twenty one years, or days of marriage, which shall first happen, the same to be put out to interest, at the discretion of my executrix, and the interest accruing thereby, to be applied to their education and maintenance, respectively, until their said respective ages, or marriages.

ALSO, I give to my wife, G, during her life, the use of all my plate and household goods, bed-steads, bedding, and other furniture; and after her decease, to remain to the said B.

* See Observation on Title to things personal by Testament and Administration, Sect. 1, 2, 3, 4, &c.

All the rest and residue of my personal estate, whatsoever and wheresoever, and of what nature, kind, or quality soever the same may be, and not herein before given and disposed of, (after payment of my debts, legacies, and funeral expences,) I do give and bequeath unto my wife G, her executors, administrators, and assigns; to and for her and their own use and benefit absolutely; And I do hereby constitute and appoint my said wife G, sole executrix of this my last will and testament. IN WITNESS, &c.

Signed, sealed, published, &c. (as }
in the foregoing precedent.) }

*A Nuncupative Will.**

No. III.

THE last will and testament of A of _____, &c. deceased, declared by him, by word of mouth, the ____ day of _____, in the presence of us who have hereunto subscribed our names as witnesses thereof. MY WILL IS, That (*here insert the very words.*) IN WITNESS whereof, we have hereunto set our hands, the ____ day of _____, in the year _____.

B.
C.
D.

* See Observations on Title to things personal by Testament and Administration, Sect. 4, 5.

No. IV.

* *A Codicil.*

WHEREAS I, A of ———, have made and duly executed my last will and testament in writing, bearing date the ——— day of ———, NOW I do hereby declare this present writing to be as a codicil to my said will, and direct the same to be annexed thereto and taken as part thereof; AND I do hereby give and bequeath to H of ———, the sum of ———, AND WHEREAS by my said will, I did give and bequeath unto L of ———, the sum of ———, NOW I do hereby revoke the said legacy, and do give unto him the sum of ———, and no more. IN WITNESS whereof, I, the said A, have to this codicil set my hand and seal, the ——— day of ———, in the year of our Lord ———.

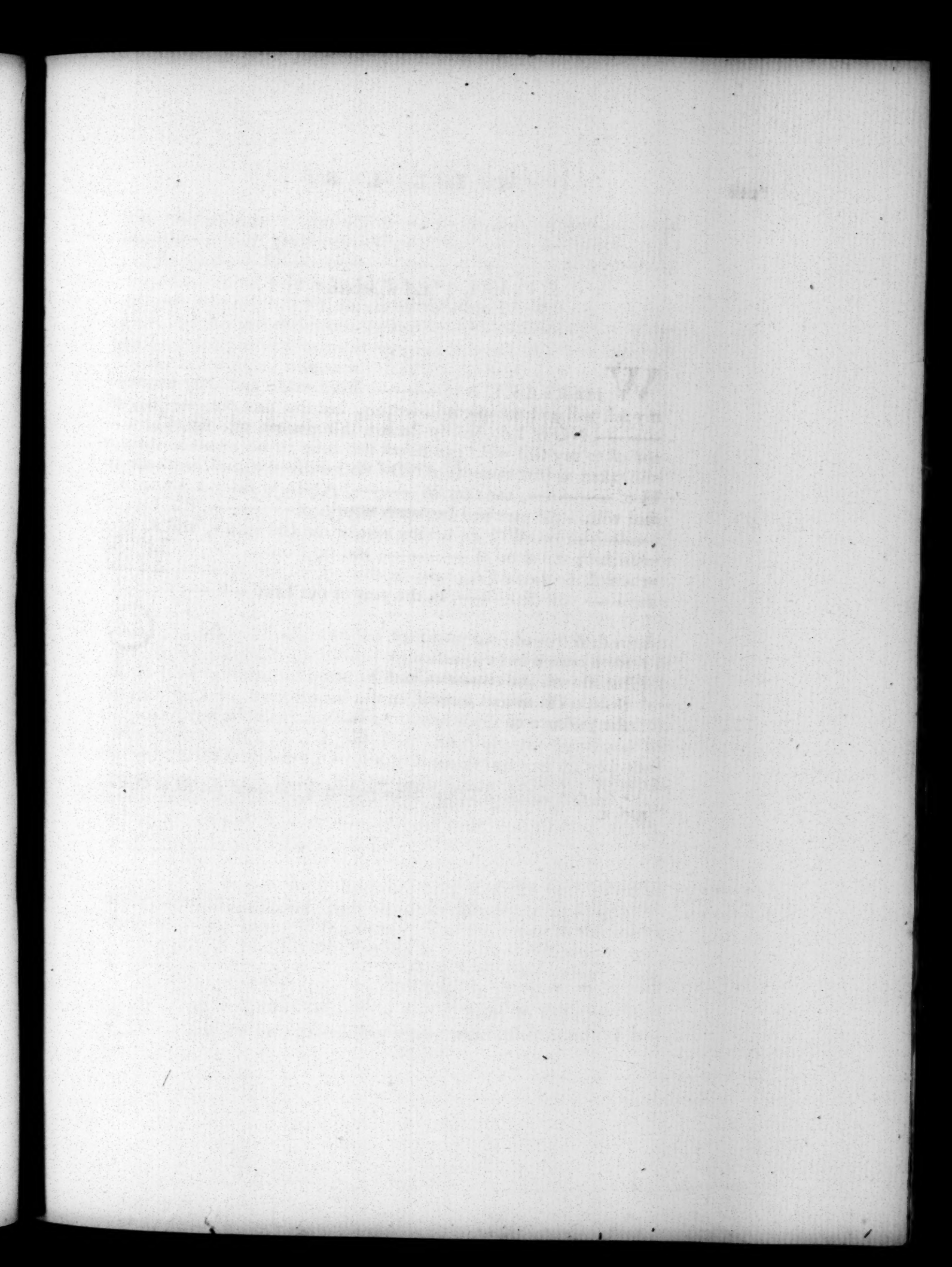
Signed, delivered, and published
for a codicil to be annexed to
his last will and testament, and
to be taken as part thereof, in
the presence of

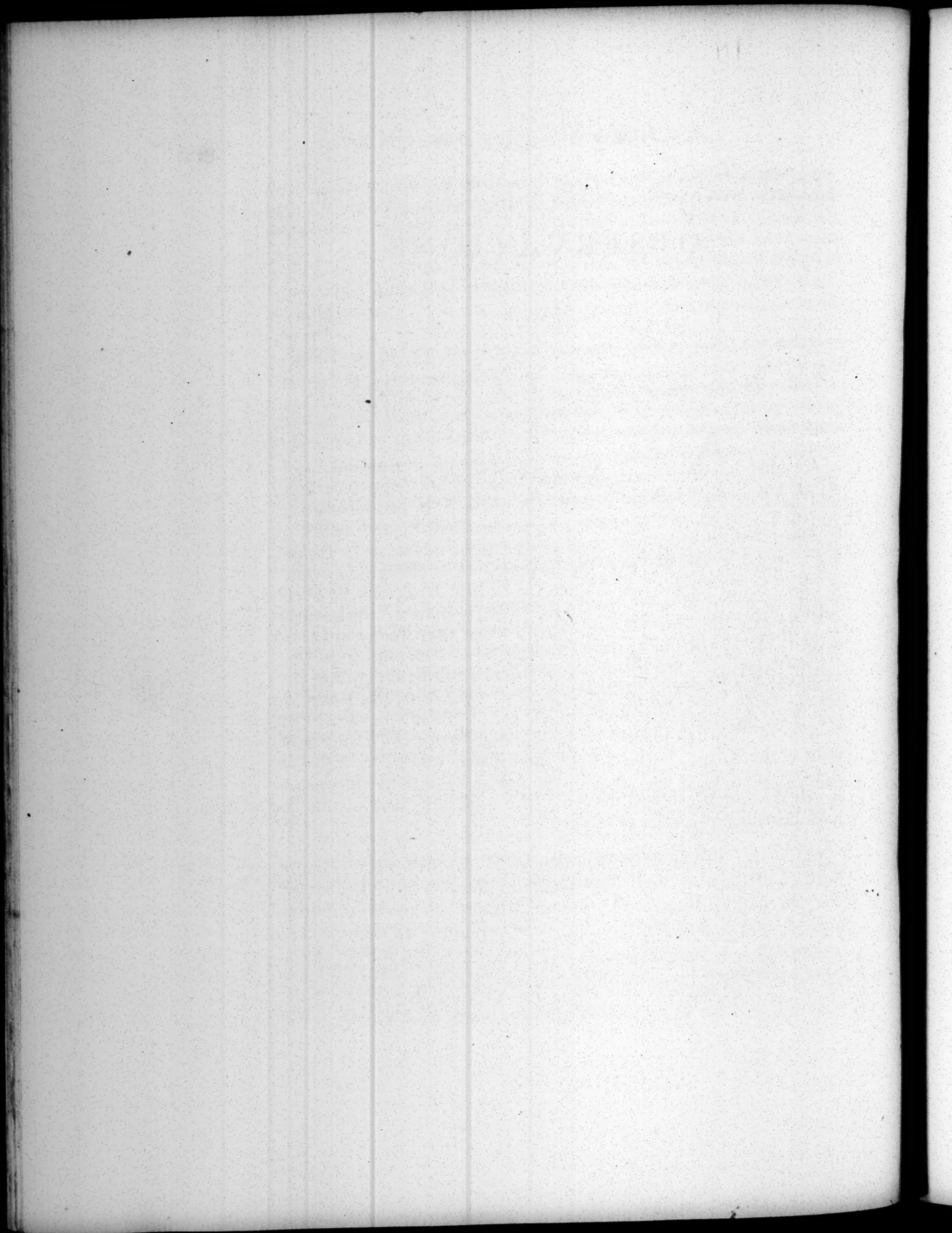
A.



B.
C.

* See Observations on Title to things personal by Testament and Administration, Sect. 6.





OBSERVATIONS

O N

E N G L I S H T E N U R E S.

SECT. 1. **A**LMOST all the real property of England, is, by the policy of its laws, supposed to be granted by, dependent upon, and held of some Superior or Lord, by, and in consideration of, certain services to be rendered to the superior, by the tenant or possessor: The thing held is therefore stiled a tenement, the possessor thereof tenant, and the manner of possession, a tenure. All land in the kingdom is supposed to be held mediately, or immediately of the King, who is stiled the Lord Paramount: Such tenants as hold immediately under the King, when they grant portions of their lands to inferior persons, become lords with respect to these inferior persons, while they remain tenants to the King, and thus partaking of a middle nature, are called *mesne* or middle lords: So that if the King grants a manor to A, and A grants a portion of the land to B, B is said to hold his lands immediately of A, and mediately of the King. Such as hold immediately under the King, in right of his crown and dignity, are called his tenants *in capite* or in chief, which, though formerly the most honourable, was the most burdensome species of tenure.

SECT. 2. Before the Restoration there subsisted four principal species of lay-tenure, viz. First, tenure in chivalry or by knight-service; Secondly, tenure in free-focage; Thirdly, tenure in absolute or pure villenage; And fourthly, tenure in privileged villenage or villain-focage. The grand criteria of which were, the natures of the several renders or services due by the tenant to the lord: These, in respect to their quality, were either free or base; in respect to their quantity, and the time of exacting them, were either certain or un-

Lay-tenures in
former times,
four in number.

certain. Free services, were such as were not unbecoming the character of a soldier or a freeman to perform; Base services, were such as were fit only for peasants or persons of a servile rank.

Tenure in chivalry or by knight-service.

SECT. 3. Where the service was free but uncertain, as military service with homage, the tenure was called tenure in chivalry or by knight-service.

Tenure in free-focage.

SECT. 4. Where the service was not only free but certain, the tenure was called free-focage.

Tenure in absolute or pure villenage.

SECT. 5. Where the service was base in its nature, and uncertain as to time and quantity, the tenure was absolute or pure villenage.

Tenure in privileged villenage or villein-focage.

SECT. 6. Where the service was base but certain, the tenure was distinguished by privileged villenage, or, from the certainty of its services, villein-focage.

Reduced to two species, viz. focage and copyhold.

SECT 7. Tenures in chivalry or by night-service, were however totally abolished by the statute 12 Charles II. cap. 24. which enacts, "That all sorts of tenures held of the King, or others, be turned into free or common focage, save only tenures in *frank al moign*, copy-holds, and the honorary services (without the slavish part) of grand serjeanty:" * So that all lay-tenures are now in effect reduced to two species, viz. focage-tenure or free-tenure in common focage, and copyhold-tenure or base-tenure by copy of court-roll, comprehending the ancient absolute or pure villenage, and, the privileged villenage or villein-focage.

Socage, what.

SECT. 8. Socage (so called from the Saxon word *soc*, signifying liberty or privilege, in Latin *socagium*,) literally, a free or privileged tenure, seems to denote, in its most general and extensive signification, a tenure by any certain and determinate service: Such as, holding by fealty and twenty shillings rent; or by homage, fealty,

* A Tenant by grand serjeanty was bound, instead of serving the King generally in his wars, to do some special honorary service to him in person, as to carry his banner, his sword, or the like; or to be his butler, champion, or other officer at his Coronation.

and twenty shillings rent; or homage and fealty without rent; and includes all other methods of holding free lands by certain and invariable rents and duties, and in particular, tenure by petit serjeanty, tenure in burgage, and tenure in gavelkind.

SECT. 9. Tenure by petit serjeanty may be defined, a holding lands of the King by the service of rendering to him annually some implement of war, as a bow; a sword; a lance; an arrow, or the like: No wardship of the lands or body can be claimed by the King in virtue of a tenure by petit serjeanty.

Tenure by petit serjeanty.

SECT. 10. Tenure in burgage, is where houses, or lands which were formerly the site of houses, in ancient boroughs, are held of some lord in common socage, by a certain established rent.

Tenure in burgage, what.

SECT. 11. There is a great variety of customs affecting tenements in ancient boroughs: Such as, that the wife shall be endowed of all her husband's tenements, and not of the third part only as at common law: That a man may dispose of his tenements by will, which, in general was not permitted after the Conquest till the reign of Henry VIII: But the most remarkable, is that called borough-English, by which the youngest son succeeds to the burgage-tenement on the death of his father.

SECT. 12. Tenure by gavelkind seems peculiar to the county of Kent; the principal distinguishing properties of which are these, First, the tenant is capable by law to alienate his estate by deed of feoffment at the age of fifteen: Secondly, the estate does not escheat in case of an attainder and execution for felony: And thirdly, the lands descend, not to the eldest, youngest, or any one son only, but to all the sons together.

Tenure by gavelkind, what.

SECT. 13. From the ancient tenure of pure villenage, has descended the present copyhold-tenure, or tenure by copy of court-roll at the will of the lord; in order to obtain a clear idea of which, it will be necessary to take a short view of the nature of manors:

SECT. 14. A Manor, appears to have been a district of ground held by lords or great personages, who kept in their own hands as much land as was necessary for the use of their families, which were

Origin of copyholds.

called demefne lands; the other tenemental lands, they diftributed among their tenants, which, from the different modes of tenure, were diftinguifhed by book-land or charter-land, and folk-land. Book-land, was that which was held by deed under certain rents and free-services; whence have arifen all the freehold tenants who hold of particular manors, and owe fuit and fervice to the fame. Folk-land, was held by no affurance in writing, but diftributed among the common folk or people, at the pleafure of the lord, and refumed at his difcretion. Manors were frequently called baronies, as they ftill are lordfhips; and each lord or baron was empowered to hold a domeftic court, called the court-baron, for redreffing mifdemeanors and abufes within the manor, and for fettling difputes of property among the tenants: This court is infeparably connected with every manor; and if the fuitors fhould fo fail, as not to leave a fufficient number to make a jury or homage, that is, two tenants at the leaft, the manor itfelf is loft.

SECT. 15. A practice had prevailed among the King's barons of frequently granting fmall manors to inferior perfons to be held of themfelves: In imitation whereof, thefe inferior perfons granted to others eftates ftill more minute, to be held of themfelves, and were fo proceeding downwards till it was obferved, that by this method of fubinf feudation, the fuperior lords loft all their feudal profits, which fell into the hands of the middle lords, as the immediate fuperiors of thofe who occupied the land: To remedy this it was directed by ftatute 18 Edward I.* "That, upon all fales or feoffments of lands, the feoffee fhall hold the fame, not of his immediate feoffer, but of the chief lord of the fee: Hence it is, that all manors, exifting at this day, muft have exifted ever fince the aforefaid ftatute was made.

SECT. 16. Under the Saxon government there was in England a clafs of people in a condition of downright fervitude, and who belonged to the lord of the foil, like the cattle or flock upon it: Thefe feem to have been the people who held eftates in villenage, or what was called the folk-land: On the arrival of the Normans, it is not improbable that they, who were ftrangers to any other than a

* Anno Dom. 1290.

feudal state, might admit the wretched persons of this description, who fell to their share, to the oath of fealty; which conferred a right of protection, and raised the tenant to a kind of estate somewhat superior to downright slavery: This they called, villenage, and the tenants, villeins: These villeins, were either annexed to the manor or land; or, to the person of the lord, and were transferable by deed from one owner to another: They could acquire no property in lands or goods: If a villein purchased either, the lord might enter upon them, *oust* the villein, and seize them to his own use.

SECT. 17. The good nature and benevolence however of many lords of manors, having, for time out of mind, permitted their villeins, and their children, to enjoy their possessions without interruption, in a regular course of descent; the common law, of which custom is the life, gave these villeins title to prescribe against their lords; and, on performance of the same services, to hold their lands, in spite of any determination of the lord's will: For though, in general, they are still said to hold their estates at the will of the lord, yet, it is such a will as is agreeable to the custom of the manor; which customs are preserved and evidenced by the rolls of the several courts-baron in which they are entered, or kept on foot by the constant immemorial usage of the several manors in which the lands lie: As such tenants had nothing to show for their estates but these customs, and admission in pursuance of them, they were called tenants by copy of court-roll, and their tenure a copy-hold: Hence, it appears that copy-holders are in truth mere villeins, who, by a long series of encroachments on the lord, have at last established a customary right to those estates, which before were held absolutely at the lord's will.

SECT. 18. Copy-hold tenure cannot exist, unless the lands be part of, and situated within, that manor under which they are held; And, unless they have been demised, or are demiseable, by copy of court-roll, immemorially: For immemorial custom is an essential requisite of all tenures by copy, so that no new copy-hold can be, strictly speaking, granted at this day.

Main principles
of copy-hold
tenure.

SECT. 19. In manors, where the custom hath been to permit the heir to succeed the ancestor in his tenure, the estates are siled

Copy-holds of
inheritance, and
for life only.

copy-holds of inheritance: In others, where the lords have been more vigilant to maintain their rights, they remain copy-holds for life only.

SECT. 20. Under the modern tenure of copy-hold at the will of the lord, there are comprehended, both the ancient tenure of pure villenage; and the ancient tenure of privileged villenage or villein-focage, so called, from its partaking of the baseness of villenage in its services, and the freedom of focage in the certainty of these services: This appears to be an exalted and still subsisting species of copy-hold, viz. the tenure in ancient demefne.

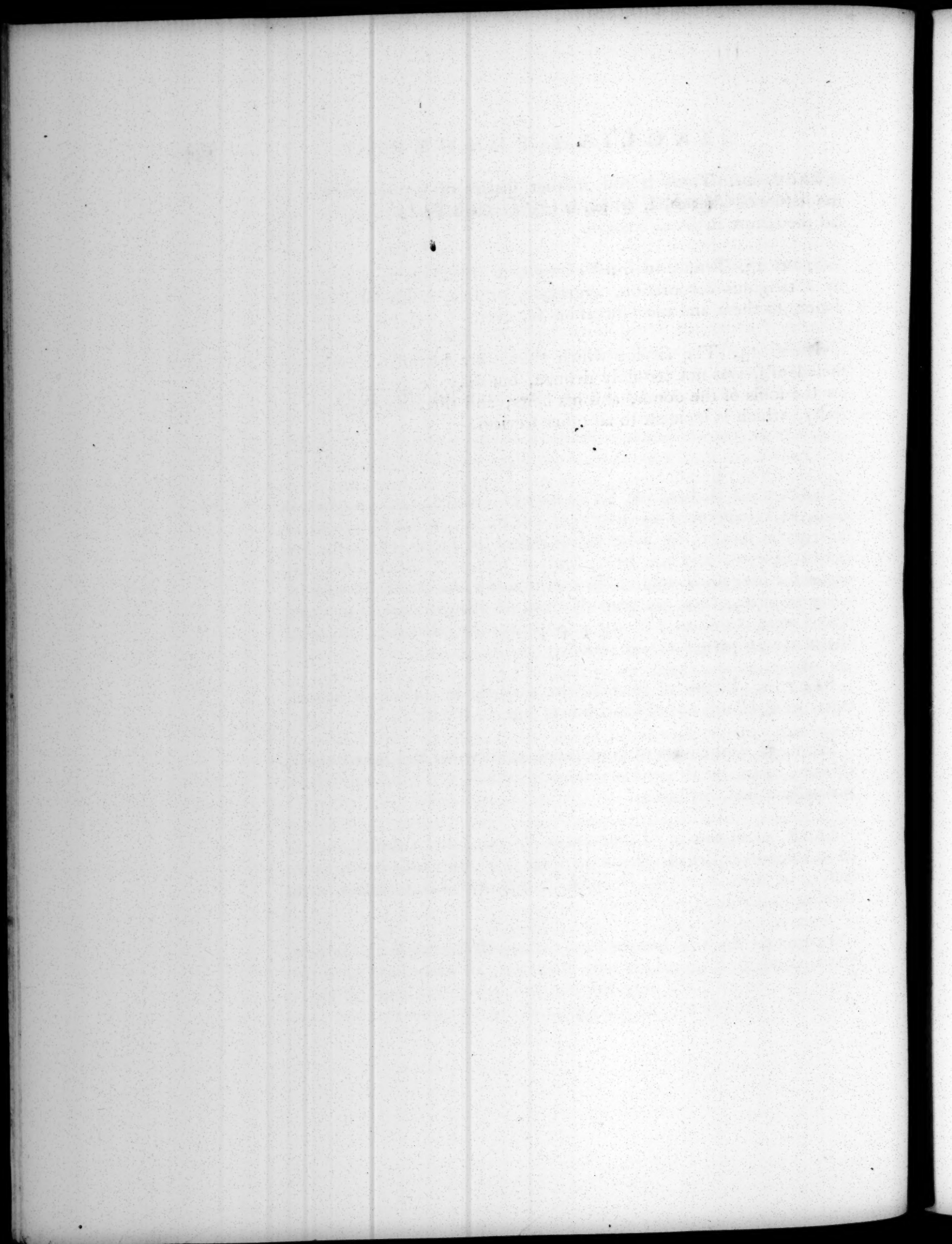
Tenure in ancient demefne.

SECT. 21. Ancient demefne consisted of those lands or manors, which, though now perhaps granted to private subjects, were actually in the hands of the crown in the time of Edward the Confessor, or William the Conqueror: The tenants of these lands were not all of the same order or degree: Some of them continued for a long time pure and absolute villeins, others were in a great measure enfranchised by the royal favour, being only bound to perform some of the better sort of villein-services, but those determinate and certain: In consideration whereof, many immunities and privileges were granted to them; such as, to try the right of their property in a peculiar court of their own; not to pay tolls or taxes; not to contribute to the expence of the knights of the shire; not to be put on juries, and the like: These tenants therefore, though their tenure be absolutely copy-hold, have an interest equivalent to a freehold, and cannot be compelled, like pure villeins, to relinquish their tenements at the lord's will, or to hold them against their own: Lands held by this tenure are therefore a species of copy-hold, and, as such, preserved and exempted from the operation of the statute of Charles II. Yet they differ from common copy-holds, principally, in the privileges before-mentioned; and from freeholds, by one mark of villenage, viz. that they cannot be conveyed from man to man by the general common law conveyances of feoffment, but must pass by surrender to the lord, or his steward, in the manner of common copy-holds; with this difference, that in these surrenders of lands in ancient demefne of frank-tenure, it is not usual to say, "to hold at the will of the lord" in their copies, but only, "to hold according to the custom of the manor."

SECT. 22. There is still another species of tenure reserved by the statute of Charles II. which is of an ecclesiastical nature, and called the tenure in *frank almoign*.

SECT. 23. Tenure in *frank almoign*, or free alms, is that where- by a religious corporation, aggregate, or sole, holds lands of the donor, to them and their successors for ever. Tenure in *frank almoign*.

SECT. 24. The service which they were bound to render for these lands, was not certainly defined, but only, in general, to pray for the souls of the donor, and his heirs; and therefore they did no fealty, which is incident to all other services.



OBSERVATIONS

O N

FREEHOLD ESTATES.

SECT. 1. **A** Freehold Estate may be defined, such an estate in lands, as is conveyed by livery of seizin: or, in tenements of an incorporeal nature, by what is equivalent to livery of seizin, viz. receipt of rent, and the like: And as estates of inheritance, and estates for life, could not, by the common law, be conveyed without livery of seizin, these are properly freehold estates: And as no other estates were conveyed with the same solemnity, therefore, no other estates are properly freehold estates.

Freehold estates

SECT. 2. Estates of freehold are divisible into estates of inheritance, and, estates not of inheritance, but for life only:

Divisible into estates of inheritance, and estates not of inheritance, but for life only.

SECT. 3. And estates of inheritance, are divided into inheritances, absolute, or fee-simple; and inheritances limited, one species of which is usually called, fee-tail.

Estates of inheritance divisible into inheritances absolute or fee-simple, and inheritances limited.

SECT. 4. A tenant of inheritance absolute, or fee-simple, (or as he is sometimes called, tenant in fee,) is he who hath lands, tenements, or hereditaments, to hold to him and his heirs for ever, without mentioning what heirs.

Tenant in fee-simple, what.

SECT. 5. As it is however an undeniable principle in the law, that all lands in England are held mediately, or immediately, of the King, the tenant hath only the usufruct, not the absolute property of the soil: And hence the strongest and highest estate that any sub-

ject can have, is expressed by these words, "He is seized thereof in his demesne as of fee." But still a fee signifies an estate of inheritance, being the most extensive interest that a man can have in a feod; and when the term fee-simple is used, it imports an absolute inheritance, clear of any condition, limitation, or restriction, to particular heirs.

The word "heirs" necessary to make a fee of inheritance.

SECT. 6. In a grant or donation of lands, the word "heirs" is necessary to make a fee of inheritance: For though it should be given to a man for ever, or to him and his assigns for ever, this vests in him only an estate for "life."

Except in devises by will.

SECT. 7. But this rule is softened by many exceptions. It does not extend to devises by will: By a devise to a man "for ever," or to a man and his assigns "for ever," or to one in fee-simple, the devisee hath an estate of inheritance, for the intention of the deviser is sufficiently plain, from the words of perpetuity annexed, though he hath omitted the legal words of inheritance.

SECT. 8. By a devise to a man and his assigns, without annexing words of perpetuity, the devisee shall only take an estate for life.

And in assurances by fine or recovery.

SECT. 9. It does not extend to fines, or to recoveries, considered as a species of conveyance; for thereby an estate in fee passes by the act and operation of the law, without the word "heirs;" nor to creations of nobility by writ; nor to grant of lands to sole corporations and their successors; but the general rule is, that the word "heirs" is necessary to create an estate of inheritance.

And in creations of nobility by writ.

Inheritances limited, what.

Divisible into base or qualified fees, and fees-tail, formerly called conditional fees.

SECT. 10. Inheritances limited, or limited fees, are such as are clogged, or confined, with conditions or qualifications of any sort; and are divisible into base, or qualified fees, and fees conditional, so called at the common law, and afterwards fees-tail, in consequence of the statute *de donis conditionalibus*.*

A base or qualified fee, what.

SECT. 11. A base or qualified fee, is such a one as has a qualification annexed, which must be determined whenever that qualifi-

* 13 Edward I. cap. 1.

cation is at an end: As in the case of a grant to a man and his heirs, tenants of a certain manor, whenever the heirs cease to be tenants of that manor, the grant is defeated.

SECT. 12. A conditional fee at the common law, was a fee restrained to some particular heirs, exclusive of others, as, to the heirs of a man's body.

A conditional fee, what.

SECT. 13. It was anciently held, that a gift to a man, and the heirs of his body, was a gift upon condition, that it should revert to the donor, if the donee had no heirs of his body; so that as soon as the donee had any issue born, the estate was supposed to become absolute: So far as, First, to enable the tenant to alienate the land, and thereby to bar, not only his own issue, but also, the donor of his interest in the reversion: Secondly, to subject him to forfeit it for treason: And thirdly, to empower him to charge the lands with rents, &c. However, if the tenant did not, in fact, alienate the lands, and the issue died, the lands reverted to the donor: To prevent which, and to subject the lands to the ordinary course of descent, the donees of conditional fees-simple, took care to alienate as soon as they had performed the condition by having issue, and afterwards purchased the lands, which gave them a fee-simple absolute, that would descend to their heirs general: Thus stood the old law with regard to conditional fees; But the nobility, who were willing to perpetuate their possessions in their own families, to put a stop to this practice, procured the statute 13 Edward I. cap. 1. to be made, which enacts, that from thenceforth the will of the donor be observed, and that tenements given to a man and the heirs of his body, shall go to the issue, if there are any, if none, that they shall revert to the donor.

Statute de donis.

SECT. 14. Upon the construction of this Act, the judges determined, that the donee had no longer a conditional fee-simple which became absolute the instant any issue was born: But they divided the estate into two parts, leaving in the donee a new kind of particular estate, which they denominated a fee-tail, and vesting in the donor the ultimate fee-simple of the lands expectant on the failure of issue; which expectant estate is what is now called a reversion.

Origin of fee-tail.

SECT. 15. Estates-tail, are either general, or special.

Estates-tail, either general, or special.

Tail-general,
what.

SECT. 16. An estate tail-general, is where lands are given to one, and the heirs of his body begotten: which is so called, because how often soever such donee in tail be married, his issue in general, by all and every such marriage, is, in successive order, capable of inheriting the estate.

Tail-special,
what.

SECT. 17. An estate tail-special, is where the gift is restrained to certain heirs of the donee's body: as where lands and tenements are given to a man, and the heirs of his body to be begotten on his present wife: And here it may be observed, that the words of inheritance, to a man and "his heirs," give him an estate in fee: To "heirs to be by him begotten," an estate in fee-tail: To the heirs of his body, to be begotten on a "certain person," (as, on his present wife) an estate in fee-tail special.

A gift to a man and his "heirs," gives him an estate in fee. To heirs to be by him begotten, an estate in fee-tail. To heirs of his body to be begotten on a certain person, an estate in fee-tail special.

An estate in tail-male general, what.

SECT. 18. Estates in general and special-tail, are farther diversified by the distinction of sexes, for both of them may either be in tail-male, or tail-female: Land given to a man, and the heirs-male of his body begotten, is an estate in tail-male general.

An estate in tail-female special, what.

SECT. 19. Land given to a man, and the heirs-female of his body on his present wife begotten, is an estate in tail-female special.

SECT. 20. As the word "heirs" is necessary to create a fee, the word "body" or some other words of procreation, are necessary to make it a fee-tail, and ascertain to what heirs in particular the fee is limited: If therefore either the words of inheritance, or words of procreation be omitted, although the others are inserted in the grant, it will not be an estate-tail: As, if a grant be made to a man and the issue of his body; to a man and his children or offspring: These would only be estates for life, because the words of inheritance, "his heirs", are wanting: And, on the other hand, a gift to a man and his heirs, male or female, would only create an estate in fee-simple; for there are no words to ascertain the body out of which they shall issue: Yet, in last wills and testaments, an estate-tail may be created by a devise to a man and his heirs-male.

SECT. 21. This statute, *de donis*, occasioned however infinite difficulties and disputes; children grew disobedient, when they knew that their father could not disinherit them: Farmers were ousted of

their leases; for if such leases had been valid, then, under colour of long leases, the issue might have been defeated: And creditors were defrauded of their debts; for if a tenant in tail could have charged his estate with their payment, he might likewise have mortgaged it for as much as it was worth, and thereby also have defeated the issue: But as the nobility were always fond of this statute, which preserved their family estates from forfeiture, there were little hopes of procuring its repeal: A method therefore was devised to evade it; and this was by an action of common recovery, the nature and effects of which will be hereafter fully explained.* Other expedients were also soon after invented to abridge estates-tail of their duration, and strip them of their privileges: So that they are now again reduced to almost the same state, even before issue born, as conditional-fees were in at common law after the condition was performed by the birth of issue.

SECT. 22. A tenant in tail, is now enabled to alienate his lands and tenements, by fine, and by recovery, (but by no other mode of conveyance,) and thereby defeat the interest, as well of his own issue though unborn, as of the reversioner. He is liable to forfeit them for high-treason; and he may charge them with reasonable leases, and with such debts as have been contracted in commerce, &c.

Tenant in tail may now alienate by fine, and recovery.

SECT. 23. WE now come to such estates of freehold, as are not of inheritance, but for life only: And of these, some are conventional, or created by the act of parties; others merely legal, or created by the construction of law.

Estates of freehold, not of inheritance, but for life only conventional and legal.

SECT. 24. Estates for life, expressly created by deed or grant, (which alone are properly conventional) are where a lease is made of lands or tenements, to a man to hold for the term of his own life, or for that of any other person, or for more lives than one: In any of which cases, he is styled tenant for life; only, when he holds the estate by the life of another, he is usually styled tenant *pur autre vie*.

Conventional, what.

* See Observations on Alienation by matter of Record.

SECT. 25. These estates are given or conferred by the same feudal rites and solemnities, the same investiture or livery of seizin, as fees themselves are; and they are held by fealty, if demanded, and by such conventional rents and services, as the lord or lessor, and his tenant or lessee, have agreed on.

SECT. 26. A grant to one of a certain manor, makes him tenant for life: For though there are no words of inheritance, or heirs, mentioned in the grant, it cannot be construed to be a fee: It will however be construed to be as large an estate as the words of the donation will bear, and therefore an estate for life.

Legal, what.

SECT. 27. The next estate for life, is of the legal kind, viz. That of tenant in tail after possibility of issue extinct: This happens where one is tenant in special-tail, and a person from whose body the issue was to spring, dies without issue, or having left issue, that issue becomes extinct; so that the surviving tenant in special-tail, becomes tenant in tail after possibility of issue extinct.

SECT. 28. This estate partakes, partly of the nature of an estate-tail, and partly of the nature of an estate for life: The tenant with many of the other privileges of a tenant in tail, hath that of not being punishable for waste; and he is tenant in tail, under this among many other restrictions of a tenant for life, that he forfeits his estate, if he alienates it in fee-simple; and, in general, the law looks on this estate as equivalent to an estate for life only; and, as such, will permit the tenant to exchange it with a tenant for life, which exchange can only be made of estates that are equal in their nature.

Tenant by courtesy, what.

SECT. 29. Another estate of freehold (not of inheritance) is that of courtesy by the law of England: As, where a man marries a woman seized of lands or tenements, in fee-simple or fee-tail, that is, of any estate of inheritance; and has by her issue, born alive, capable of inheriting her estate, he shall, on the death of his wife, hold the lands for his life, as tenant by the courtesy of England: Hence there are four requisites necessary to make a tenant by courtesy—Marriage—Seizin of the wife—Issue—Death of the wife:

SECT. 30. A fourth species of freehold estates, not of inheritance, is that of dower: As where a husband, seized of an estate of inheritance, dies, the widow shall have a third part of all the lands and tenements whereof he was seized during the coverture, to hold to herself during the term of her natural life.

Tenant in dower, what.

SECT. 31. A widow, by the common law, is entitled to be endowed of all lands and tenements of which her husband was seized, in fee-simple, or fee-tail, at any time during the coverture, of which her issue might have been heir.

SECT. 32. A feizin in law will be as effectual as a feizin in deed, in order to render the wife dowable.

SECT. 33. Copy-hold estates are not liable to dower, unless by the special custom of the manor, in which case it is usually called, the widow's free-bench. Where dower is allowable, it matters not though the husband alienate the lands during the coverture, for they are liable to the dower.

Copy-hold estates not liable to dower, except in some cases.

SECT. 34. There appear to have been anciently five species of dower; one of which* was abolished with the military tenures: The other four are,

Dower, anciently of five species, now reduced to four.

SECT. 35. Dower by the common law, which is that before described:

First, Dower, by the common law.

SECT. 36. Dower by particular custom, as, that the wife shall have half the lands, or in some places the whole, in some others only a quarter:

Secondly, Dower by particular custom.

SECT. 37. Dower *ad ostium ecclesiæ*, which is where a tenant in fee-simple, of full age, openly at the church door, doth endow his wife with the whole, or such quantity of his lands as he shall please, at the same time specifying and ascertaining the same:

Thirdly, Dower *ad ostium ecclesiæ*.

* Viz. Dower "*de la plus belle*" which was where the wife was endowed with the fairest part of her husband's estate.

Fourthly, Dower, ex assensu patris.

SECT. 38. Dower *ex assensu patris*, a species of dower *ad osium ecclesiæ*, made when the husband's father is alive, and the husband by the father's consent expressly given, endows his wife with part of his father's lands: In either of these two last mentioned cases, they must, to prevent frauds, be made *in facie ecclesiæ*.

Jointure, what.

SECT. 39. At present, upon pre-concerted marriages, and in estates of considerable consequence, tenancy in dower seldom happens, and jointures have been introduced in their stead. A jointure, in common acceptation, may be thus defined, "A competent livelihood of freehold for the wife of lands and tenements, to take effect in profit or possession, presently after the death of the husband, for the life of the wife at least:" In making of which, these four requisites must be punctually observed; First, It must take effect immediately on the death of the husband: Secondly, It must be for her own life, at least, and not *pur auter vie*, or for any term of years, or other smaller estate: Thirdly, It must be made to herself and no other in trust for her: Fourthly, It must be made, and so in the deed particularly expressed to be, in satisfaction of her whole dower, and not of any particular part of it:

SECT. 40. If the jointure be made after her marriage, she has her election, after her husband's death, either to abide by it, or to refuse it, and betake herself to her dower at law.

OBSERVATIONS

O N

ESTATES LESS THAN FREEHOLD.

OF estates less than freehold, there are three sorts; First, Estates for years; Secondly, Estates at will; Thirdly, Estates by sufferance.

Estates less than freehold, of three sorts.

SECT. 1. An estate for years, is a contract for the possession of lands or tenements, for some determinate period: This estate is frequently called a term, because its duration or continuance is bounded and determined; for every such estate must have a certain beginning and a certain end: Therefore a lease to a man for so many years as he shall live, is void.

First, Estate for years.

SECT. 2. An estate for years is, by law, inferior to an estate for life, even to an estate *pur autre vie*. An estate for life is a freehold: But an estate for years, even for one thousand years, is only a chattel, and reckoned part of the personal estate: Hence an estate for years may be made to commence *in futuro*, whereas a lease for life cannot. No estate of freehold can commence *in futuro*; because it cannot be created without livery of seizin, or corporeal possession of the land; and corporeal possession cannot be given of an estate now, which is not to commence now, but hereafter.

SECT. 3. An estate at will, is where lands and tenements are let by one man to another, to have and to hold at the will of the lessor: Such tenant hath no certain estate, for the lessor may determine his will, and put him out, whenever he pleases.

Secondly, Estate at will.

Thirdly, Estates
by sufferance.

SECT. 4. Almost every copy-hold tenant being a tenant at the will of the lord, according to the custom of the manor; a copy-hold estate is a species of estate at will; though custom has established a permanent property in the copy-holder, equal to that of the lord himself, in the tenements held of the manor; nay, sometimes even superior; for a copy-holder of inheritance, with a fine certain, may now be looked upon as little inferior to an absolute freeholder in point of interest, and in the clearness and security of his title, to be frequently in a better situation.

SECT. 5. An estate at sufferance, is where one comes into possession of land by lawful title, but keeps it afterwards without any title: As if a man takes a lease for a year, and after the year is expired, continues to hold the premises, without leave from the owner.

OBSERVATIONS

ON

ESTATES UPON CONDITION.

ESTATES upon condition are of two sorts: First, Estates upon condition implied: Secondly, Estates upon condition expressed: under which last may be included, First, Estates held *in vadio*, i. e. gage or pledge: Secondly, Estates by statute-merchant and statute-staple: And thirdly, Estates held by elegit.

Estates upon
condition of
two sorts.

SECT. 1. An estate upon condition implied in law, is where a grant of an estate has a condition annexed to it, inseparable from its essence and constitution, although no condition be expressed in words: As if a grant be made to a man of an office, in general terms, the law tacitly annexes a condition, that the grantee shall duly execute his office.

First, Estates
upon condition
implied.

SECT. 2. An estate on condition expressed in the grant, is where an estate is granted, either in fee-simple or otherwise, with an express qualification annexed, whereby the estate granted shall either commence, be enlarged, or be defeated:

Secondly,
Estates upon
condition ex-
pressed.

SECT. 3. These conditions are either precedent, or subsequent: As if an estate for life be limited to A upon his marriage with B, the marriage is a precedent condition, and 'till that happens, no estate is vested in A: But if a man grant an estate in fee-simple, reserving to himself and his heirs a certain rent; and that, if such rent be not paid at the times limited, it shall be lawful for him and his

Conditions ei-
ther precedent
or subsequent.

A precedent
condition.

A subsequent condition.

heirs to re-enter, and avoid the estate; the grantee and his heirs have an estate upon condition subsequent, which is defeasible if the condition be not strictly performed.

Distinction between condition in deed, and condition in law

SECT. 4. A distinction is however made between a condition in deed, and a limitation, or condition in law: For when an estate is so expressly confined and limited by the words of its creation, that it cannot endure for any longer time than till the contingency happens upon which it is to fail, it is a limitation: As when land is granted to a man while he continues unmarried, or until out of the rents and profits he shall have made five hundred pounds; the estate determines when the contingency happens, that is to say, when he marries, or has received five hundred pounds; and the subsequent estate becomes vested in him who is next in expectancy, without any act to be done by him: But when an estate is, strictly speaking, upon condition in deed, as if granted expressly on condition to be void on the payment of forty pounds by the granter, the law permits it to endure after the forty pounds is paid, unless the granter, or his heirs or assigns, take advantage of the breach of the condition, and make either an entry, or a claim to the estate.

Estates held *in vadio*, in gage or pledge, are of two kinds; *vivum vadium*, or living-pledge: and *mortuum vadium*, dead-pledge or mortgage.

Vivum vadium or living pledge.

SECT. 5. *Vivum vadium*, or living-pledge, is when a man borrows a sum (suppose two hundred pounds,) of another, and grants him an estate, (as, of twenty pounds per annum,) to hold till the rents and profits shall repay the sum borrowed.

Dead-pledge or mortgage.

SECT. 6. Dead-pledge or mortgage, is where a man borrows of another a specific sum, and grants him an estate in fee, on condition that if he, the mortgager, shall repay the mortgagee on a certain day mentioned in the deed, then the mortgagee shall re-convey the estate to the mortgager: In this case, the land so put in pledge, is, by law, in case of non-payment at the time limited, forfeited by the mortgager, and the mortgagee's estate therein, is no longer conditional, but absolute: It having been formerly a doubt, whether, by taking such estate in fee, it did not become liable to the wife's dower, and other encumbrances of the mortgagee, it became usual to grant only a

long term of years, by way of mortgage, with condition to be void on repayment of the money.

SECT. 7. Although, however, the land be forfeited by non-payment of the money borrowed at the time limited, and the same consequently vested in the mortgagee at common-law, yet the courts of equity will interpose; and will consider the real value of the land compared with the sum borrowed; and, if it be of greater value than the money lent thereon, they will allow the mortgager at any reasonable time to recall or redeem the land, on paying to the mortgagee his principal, interest, and expences: But on the other hand, the mortgagee may either compel the sale of the land, in order to get his money, or call upon the mortgager to redeem it; or, in default thereof, to be for ever fore-closed from redeeming the same; that is, to lose his equity of redemption, without possibility of recall.

SECT. 8. Mortgages of freehold-estates, are usually made by lease and release; or by demise or lease; and sometimes, though seldom, by deed of bargain and sale.

SECT. 9. * A mortgage by lease and release, is an absolute conveyance of the freehold; to be void, however, on certain conditions expressed in the release.

Mortgage of freehold estates by lease and release.

SECT. 10. † A mortgage by demise, is a lease of a freehold for a term of years, to be held at a pepper-corn rent; redeemable at a day therein-mentioned, on payment of the mortgage-money. In mortgages by lease and release, or by demise, it is necessary for the security of the mortgagee, (where the mortgager is married, and has made no settlement on his wife before marriage, in bar of her dower,) That the wife be a party, and, along with her husband, covenant to levy a fine to bar her dower. ‡ Mortgages by demise, are simple deeds, and much in use where the estate is valuable, and where there are no old mortgage terms, or other encumbrances, affecting

And by demise or lease.

* See Mortgages, No. 1. and 2.

† See Mortgages, No. 4.

‡ See Observations on Freehold Estates, Sect. 30, 31.

it; and were first adopted, because, on the death of the mortgagee the term becomes vested in his personal representatives, who are entitled, in equity, to receive the money lent: However, a mortgage by lease and release, is, perhaps, a better and more ample security; because the mortgagee has an estate of inheritance vested in him, and can the more easily fore-close the mortgager's equity of redemption.

Mortgage of a
leasehold estate

SECT. 11. * A mortgage of a leasehold estate, is made by assignment of the lease: To these mortgages it is not necessary that the wife be a party, because, by law, she is only entitled to be endowed of such lands and tenements as her husband was seized in, in fee-simple, and fee-tail, during the coverture: And as seizure is not necessary to a lease for years, the lessee is not said to be seized, or to have true legal seizure of the lands; consequently the wife is not entitled to be endowed of any part thereof; she can take no estate therein: But a lease being a chattel, and part of the personal estate,† she will, if her husband dies intestate, be entitled to a third of the money arising by a sale of such lease, after payment of his debts.

Mortgage of a
copyhold estate

SECT. 12. ‡ Mortgages of copyholds are made by surrendering the copyhold premises in the hands of the lord of the manor, to the use of the mortgagee under conditions, &c.

SECT. 13. Copyhold estates are not liable to dower, unless by the special custom of the manor, when it is usually called the widow's free-bench: || In which case, for security of the mortgager, the wife should be a party, and covenant to levy a fine.

SECT. 14. It is frequently the practice to take a bond from the mortgager, for payment of the mortgage-money, and sometimes also

* See Assignments, No. 7.

† See Observations on Estates less than Freehold, Sect. 2.

‡ See Mortgages, No. 5.

|| See Observations on Freehold Estates, Sect. 33.

for performance of the covenants stipulated in the mortgage.* So that the mortgagee, in default of payment, may have it in his power to resort to the person of the mortgager; or by putting the bond in suit, to obtain judgment against his other estates, real and personal. Sometimes too the mortgager of a plantation in the West Indies, covenants, by a separate deed, to ship and consign the produce of his estate to the mortgagee, to be applied, after deduction of the necessary charges, in payment of the mortgage-money.†

SECT. 15. Mortgages are deemed part of the mortgagee's personal estate;‡ the mortgage-money therefore, in case of the death of the mortgagee, must be paid to his executor, unless the mortgagee in his lifetime, or by his will, has disposed of it otherwise.

A Mortgager, who conceals former encumbrances, loses his equity of redemption. Stat. 4. and 5. William and Mary, cap. 16. And should he not discharge such encumbrances, within six months after he receives intimation thereof, in writing, from the mortgagee, he also loses his equity of redemption.

SECT. 16. ESTATES held by statute-merchant and statute-staple, are another species of estates defeasible on condition subsequent: They are both securities for a debt, originally permitted only among traders for the benefit of commerce, whereby the lands of the debtor are conveyed to the creditor, till, out of the rents and profits, his debt be satisfied: And during such time as the creditor holds the lands, he is tenant by statute-merchant, or statute-staple.

Estates by statute-merchant, and statute-staple.

SECT. 17. Another similar conditional estate, created by the operation of the law, for security and satisfaction of debts, is called an

Estate by elegit.

* See Bonds, No. 5, 6, 10.

† See Agreements, No. 8.

‡ See Note under Sect. 17. of Observations on Title to Things Personal by Testament and Administration.

ESTATES UPON CONDITION.

estate by elegit: Elegit is the name of a writ founded on the statute 13 Edward I. cap. 18. by which, after a plaintiff has obtained judgment for his debts at law, the sheriff gives him possession of one half of the defendant's lands and tenements, to be held, occupied, and enjoyed, until his debt and damages are fully paid; during which time the creditor is tenant by elegit: The writ is so called, because it is in the election of the creditor to sue it out.

OBSERVATIONS

ON

ESTATES IN REMAINDER AND REVERSION.

SECT. 1. **A**N Estate in remainder may be defined, an estate limited to take effect and be enjoyed after another estate is determined: As if a man, seized in fee-simple, grants lands to A for twenty years, and after the determination of that term, then to B and his heirs for ever; A is tenant for years—remainder to B in fee: In the first place, an estate for years is created out of the fee, and given to A, and the residue or remainder of it to B: But both A and B's interests are in fact only one estate.

An estate in remainder, what.

SECT. 2. An estate of inheritance may however undergo three divisions; as if land be granted to A, for twenty years, and after the determination of these twenty years, to B for life, and after the determination of B's estate for life, to C, and his heirs, for ever: Here A is tenant for years, with remainder to B for life, remainder over to C in fee.

SECT. 3. It is a rule in the creation of remainders that there must necessarily be some particular estate precedent to the estate in remainder: As an estate for years to A, remainder to B for life; or an estate for life to A, remainder to B in tail: This precedent estate is called the particular estate, as being only a part of the inheritance, the residue or remainder of which is granted to another.

Rules to be observed in the creation of remainders.

Particular estate, what.

SECT. 4. An estate created to commence at a distant period, without any intervening estate, is no remainder; such future estate can only be made of chattel-interests: An estate of freehold must be created to commence immediately, either in possession or remainder; because, at common law, no freehold in lands can pass without livery of seizin, which must operate either immediately, or not at all: Therefore, though a lease to A for seven years, to commence from Michaelmas next, be good, yet a conveyance of lands to B, to hold to him and his heirs for ever, from the end of three years next ensuing, is void: So that when it is intended to grant an estate of freehold, whereof the enjoyment shall be deferred till a future time, it is necessary to create a previous particular estate, which may subsist till that time is completed, and the granter should deliver immediate possession of the land to the tenant of this particular estate, which is construed to be giving possession to him in remainder; since his estate, and that of the particular tenant are one and the same estate in law: As, where one leases to A for three years, with remainder to B in fee, and makes livery of seizin to A; the freehold is immediately created and vested in B, though the enjoyment of it must be deferred till the expiration of A's term: It is to all-intents an estate commencing at present, though not to be occupied till a future period.

Possession of the particular tenant deemed equivalent to that of the tenant in remainder.

SECT. 5. As the remainder cannot be created without a precedent particular estate, the particular estate is said to support the remainder: But a lease at will is not held to be such a particular estate; for an estate at will is of a nature so precarious that it is not deemed a part of the inheritance; besides if it be a freehold remainder, livery of seizin must be given at the time of its creation, and the entry of the granter to do this determines the estate at will, in the instant in which it is created.

SECT. 6. Another rule to be observed in the creation of remainders is, that the remainder must commence or pass out of the granter, at the time of the creation of the particular estate: as, where there is an estate to A for life, with remainder to B in fee, B's remainder in fee passes from the granter at the same time that seizin is delivered to A of his life-estate in possession: And it is this which induces the necessity at common law of livery of seizin being made on the particular estate, whenever a freehold remainder is

created: For if it be limited, even on an estate for years, the lessee should have livery of seizin, in order to convey the freehold from and out of the grantor, otherwise the remainder is void: Not that livery is necessary to strengthen the estate for years; but as livery of the land is requisite to convey the freehold, and yet cannot be given to him in remainder, without infringing the possession of the lessee for years, therefore, the law allows such livery made to the tenant of the particular estate, to relate and enure to him in remainder.

SECT. 7. A third rule respecting remainders is, that the remainder must vest in the grantee during the continuance of the particular estate, or that instant it determines: As, if A be tenant for life, remainder to B in tail; here B's remainder is vested in him at the creation of the particular estate to A for life: Or, if A and B be tenants for their joint lives, remainder to the survivor in fee; here, though during their joint lives the remainder is vested in neither, yet on the death of either of them, the remainder vests instantly in the survivor: But, if an estate be limited to A for life, remainder to the eldest son of B in tail, and A dies before B hath any son, the remainder will be void; for it did not vest in any one during the continuance, nor at the determination of the particular estate.

SECT. 8. Remainders are either vested, or contingent: Vested remainders, or remainders executed whereby a present interest passes to the party, though to be enjoyed in *futuro*, are, where the estate is invariably fixed, to remain to a determinate person after the particular estate is spent: As if A be tenant for twenty years, remainder to B in fee; B's is a vested remainder, which nothing can defeat.

Remainders either vested or contingent.

Vested remainders, what.

SECT. 9. Contingent or executory remainders (whereby no present interest passes) are, where the estate in remainder is limited to take effect, either to a dubious or uncertain person, or upon a dubious and uncertain event; so that the particular estate may be determined, and the remainder never take effect: Thus, if A be tenant for life, with remainder to B's eldest son then unborn, in tail; it is a contingent remainder, for it is uncertain whether B will have a son; yet the instant that a son is born, the remainder is no longer contingent, but vested: Though, if A had died before B's son was born, the remainder formerly would have been absolutely gone, for the parti-

Contingent or executory remainders, what.

cular estate was determined before the remainder could vest: By statute 10 and 11 William III. cap. 16. it is however enacted that posthumous children shall be capable of taking in remainder.

SECT. 10. A remainder also may be contingent, where the person to whom it is limited is certain, but the event on which it is to take effect is uncertain: As, where land is given to A for life, and in case B survives him, then with remainder to B in fee; here B is a certain person, but the remainder to him is a contingent remainder, depending on his surviving A.

How contingent remainders may be defeated.

SECT. 11. Contingent remainders may be defeated, by determining the particular estate upon which they depend, before the contingency happens whereby they become vested: Therefore, where there is a tenant for life, with divers remainders in contingency, he may, not only by his death, but by alienation, surrender, or other methods, destroy his own life-estate, before any of those remainders vest; the consequence of which is, that he defeats them all: As, if there be a tenant for life, with remainder to his eldest son unborn, in tail, and the tenant for life before any son is born, surrenders his life-estate, he by that means defeats the remainder in tail to his son: In these cases therefore, it is necessary to have trustees appointed to preserve the contingent remainders; in whom there is vested an estate in remainder, for the life of a tenant for life, to commence when his determines: If therefore his estate for life determines otherwise than by his death, the estate of the trustees will then take effect, for the remainder of his natural life, and become a particular estate in possession, sufficient to support the remainders depending in contingency.

Trustees for preserving contingent remainders.

SECT. 12. In devises by last will and testament, remainders may however be created in some measure contrary to the rules before laid down; though these remainders are more properly called executory devises.

Executory devises, what.

SECT. 13. An executory devise of lands, is such a disposition of them by will, that thereby no estate vests at the death of the deviser, but only on some future contingency: It differs from a remainder in three very material points: First, That it needs not any particular estate to support it; Secondly, That by it a fee-simple, or other

less estate, may be limited after a fee-simple; Thirdly, That by it a remainder may be limited of a chattel-interest, after a particular estate for life created in the same.

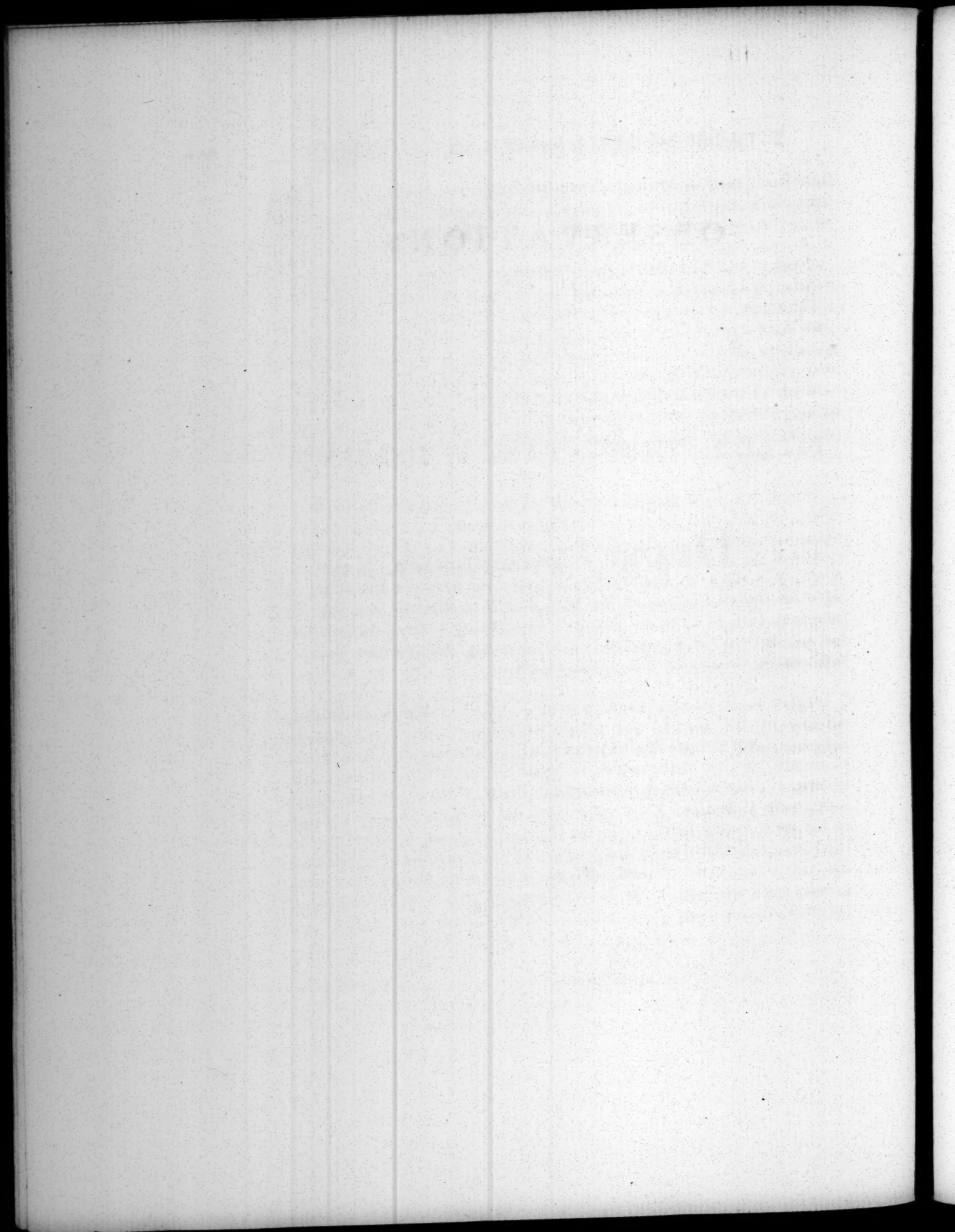
SECT. 14. The first happens when one devises land to a single woman and her heirs, upon the day of her marriage; which is in effect a contingent remainder, without any particular estate to support it, a freehold commencing at a future time; such a limitation would be void in a deed, (*inter vivos*,) yet it is good in a will by way of executory devise: For, since by a devise a freehold may pass without corporeal tradition or livery of seizin, (as it must if it passes at all,) therefore, it may commence in future; and hence an executory devise, not being a present interest, cannot be barred by a recovery suffered before it commences.

SECT. 15. The second happens where a person devises his whole estate in fee, but limits a remainder thereon to commence on a future contingency: As, if a man devises land to A and his heirs, but if A dies before the age of twenty one, then to B and his heirs: This remainder, though void in a deed, is good by way of executory devise: But in both these species of executory devises, the contingencies ought to be such as may happen within a reasonable time; as within one or more lives in being, and one and twenty years afterwards.

SECT. 16. By an executory devise, a term of years may be given to one man for his life, and afterwards limited over in remainder to another, which could not be done by deed.

SECT. 17. An estate in reversion may be defined, a returning of land to the grantor or his heirs, after the grant is over: As if there be a gift in tail, the reversion of the fee is, without any special reservation, vested in the donor by act of law: And so also the reversion after an estate for life, years, or at will, continues in the lessor: A reversion therefore is never created by deed or writing, but by act of the law; whereas, a remainder can never be limited unless by deed or devise: But both are equally transferable when actually vested.

An estate in reversion, what.



OBSERVATIONS

O N

TITLE TO THINGS REAL BY DESCENT.

SECT. 1. **D**ESCENT, or hereditary succession, is the title whereby a man on the death of his ancestor acquires his estate by right of representation, as his heir at law. Descent is either by common law, custom, or statute. Descent by custom and statute, having been already noticed,* the following observations shall be confined to descent by the common law. Descent, what.

SECT. 2. By the common law of England, inheritances lineally descend to the issue of the person last actually seized, *in infinitum*; they can never ascend: Males are admitted before females: And where there are two or more males in equal degree, the eldest only shall inherit. Thus, estates in fee-simple descend to the eldest son, or his issue, male or female: If the eldest son dies without issue, it descends to his next eldest brother, or his issue: And so on to all the other brethren, respectively, in order of birth, or their issue: If the person last actually seized had no sons, it descends to the daughters, equally as coparceners: If he had neither sons nor daughters, it descends to his next eldest brother, or his issue: Then to his other

* See "Observations on English Tenures," Sect. 11, 12. and "Observations on Freehold estates," Sect. 13, 14.

brethren, respectively, in order of birth, or their issue: And failing brethren, to the sisters equally, or their issue: And in default of all these, it descends to the uncle, as a lineal descendant of the grandfather, and so on, *in infinitum*.

SECT. 3. No person can succeed to an estate in fee-simple, unless he be of the whole blood of the person last seized. If a father has two sons A and B by different wives, they, as brethren of the half-blood only, can never succeed to each other: Even if by the death of the father the estate should descend to the eldest son A, who enters thereon and dies seized without issue, still B shall not be heir to his estate, because he is only of the half-blood to A the person last seized: But had A died without entry, B might have inherited as heir to his father.

SECT. 4. It is a maxim in the law of Scotland, that "*semel hæres, semper hæres*," one who is heir at the time of the succession opening to him, always continues such: As where a father succeeds to an only son dying without issue, and afterwards has children who would have succeeded to the son, had they been in life at the time of his death, the father shall nevertheless retain the estate.

Diversities, between the English and Scotch laws of inheritance.

SECT. 5. In this the law of England differs materially from that of Scotland; and makes a distinction between an heir-apparent, and an heir-presumptive. By the law of England, an heir-apparent is he, whose right of inheritance is indefeasible, if he outlives the ancestor: As the eldest son, and his issue. An heir-presumptive is he, whose right of inheritance may be defeated by the contingency of a nearer heir being born; as where an estate hath descended to a daughter, it shall be divested and taken away by the birth of a posthumous son; or where an estate hath descended to a brother, or nephew, it shall be divested by the birth of a posthumous son, or daughter.

SECT. 6. It has been already observed, that by the law of England, inheritances shall never ascend; by consequence parents cannot succeed to their children. In this also the law of England differs from that of Scotland; for it is now an established principle in the law of Scotland, that a father, in default of his own issue, shall succeed to his son dying without issue.

SECT. 7. The law of England, with regard to the right of inheritance among brethren, is likewise different from that of Scotland. If there be three brothers, and the middle brother purchase lands in fee-simple and die without issue, by the law of England the eldest brother shall have the lands by descent; and if the youngest brother purchase lands in fee-simple and die without issue, the eldest brother shall also have the lands by descent, and not the middle brother; and that, because the eldest is deemed the most worthy in blood. Whereas, by the law of Scotland, the immediate younger brother of the deceased, is heir of line; and the immediate elder, is heir of conquest:* And in default of a younger brother, and his issue, the immediate elder brother, (and his issue,) is heir both of line and of conquest; as is also the immediate younger, in default of an elder brother.

SECT. 8. Where lands descend from the father to the son, no relation by the mother (as such) can by the law of England ever be heir to the son in these lands: And where lands descend from the mother, no relation by the father (as such) can ever inherit: But if a son purchase lands in fee-simple, and die without issue, the lands shall, in default of an heir on the part of the father, descend to the heir on the part of the mother. Here too there is a diversity between the law of England and that of Scotland; for by the law of Scotland, none of the relations of the deceased by the mother, are capable of succession, either in heritage or in moveables.

SECT. 9. An heir is more favoured by the law of England, than by that of Scotland. By the law of England, it is a good plea for the heir when sued on an obligation executed by the ancestor, "That he has no assets or lands by descent for payment of the debt."† And, although by the law of England, lands descending to the heir are subject to debts due on mortgage, &c. yet he shall be relieved by the executor, so far as the personal estate will extend. Whereas, by the law of Scotland, one who enters heir in general,

* Conquest signifies all heritable rights, whereupon Enfeoffment has followed or may follow, acquired by the deceased upon singular Titles.

† See Observations on the Essential Requisites of English Deeds, Sect. 6.

TITLE TO THINGS REAL BY PURCHASE.

that is to say, not to any special subject, but to an inheritance considered as universal, (such as an heir of line, or of conquest,) is universally liable to the debts of the ancestor: And where lands descending to the heir are encumbered by heritable bond, (which resembles a mortgage) or otherwise, the heir has no relief whatever against the executor.

SECT. 10. In collateral inheritances, the male stocks are preferred to the female, that is, kindred derived from the blood of the male ancestors, are admitted before those from the blood of the female; unless where the lands have, as before-mentioned, descended from a female: Thus the relations on the father's side, must be all extinct, before those on the mother's side can be admitted.

Purchase, what.

SECT 11. PURCHASE, in its most extensive signification may be defined, "An acquisition of lands and tenements by a man's own act or agreement; and not by descent from any of his ancestors or kindred." Indeed, in its vulgar acceptation, it is applied only to such acquisitions of land as are obtained by bargain and sale, for money, or for some other valuable consideration; but this is by no means the legal definition of purchase; for, if A gives land freely to B, B is, in the eye of the law, a purchaser. By the law of England, purchase means what in Scotland is called conquest, both denoting any method of acquiring an estate out of the common course of inheritance; and differs from acquisition by descent, principally in these two points: First, That by purchase, an estate acquires a new inheritable quality, and is descendible to the owner's blood in general, and not to the blood only of some particular ancestor: Secondly, That an estate taken by purchase will not make the heir answerable for the acts of the ancestor, as an estate by descent will: For if a person, by any deed, covenant, obligation, or the like, binds himself and his heirs, his heir shall not be bound, unless he has an estate of inheritance, vested in him by descent from his ancestor, sufficient to answer the charge: Therefore, if a man covenants for himself and his heirs, to keep a house in repair, his heir cannot be compelled to perform this covenant, unless he has an estate sufficient for the purpose, by descent, from the covenantor.

OBSERVATIONS

ON THE

ESSENTIAL REQUISITES

AND

SEVERAL SPECIES OF ENGLISH DEEDS.

IN treating of the general nature and several sorts of English Deeds, what a deed is, shall first be defined; the essential requisites of a deed shall next be explained; and the several species or kinds of deeds shall then be considered.

SECT. 1. A Deed may be defined "a writing sealed and delivered by the parties." When executed by one party, it is usually called a deed-poll, or single deed: When by more parties than one, it is called an indenture.

What a deed is.

Deed-poll.

Indenture.

The requisites of an English deed ought next to be explained: Before doing this however, it may not be improper to consider in their order, the several clauses of which they are usually composed.

Clauses of a deed.

SECT. 2. The preamble or premises set forth the number and names of the parties; and the consideration upon which the deed is made: Then follows the description of the estate granted or conveyed.

Preamble or premises.

Habendum.

SECT. 3. Next come the habendum and tenendum: The habendum determines what estate or interest is granted by the deed, though this may be and is sometimes done in the premises; in which case, the habendum may lessen, enlarge, explain, or qualify, but not totally contradict, or be repugnant to, the estate granted in the premises: As if in the premises, a grant be made to A and the heirs of his body, in the habendum to him and his heirs for ever, or *vice versa*; A has an estate-tail, and a fee-simple expectant thereon: But had it been in the premises to A and his heirs, and in the habendum to A for life, it would be entirely void: For an estate of inheritance was, by the premises, vested in A, and cannot afterwards be taken away by the habendum.

Tenendum.

SECT. 4. The tenendum is now of very little use, and is only kept in by custom: It was formerly used to signify the tenure by which the estate granted was to be held, viz. by military service,—in burgage,—in free socage, &c.—But all these being now reduced to free and common socage, the tenure is never specified. After the tenendum follow the terms or stipulations, if any, on which the grant is made; such as the reddendum, or reservation, whereby the granter creates or reserves some new thing to himself out of what he had before granted; “rendering therefore yearly the sum of ten shillings;” or, “a pepper-corn;” or, “two days ploughing,” or the like: And a condition, or clause of contingency, on the happening of which the estate granted may be defeated; as, “Provided always, that if the mortgager shall pay the mortgagee five hundred pounds upon such a day, the whole estate shall determine,” and the like.

Reddendum.

Warranty.

SECT. 5. Next comes the clause of warranty, whereby the granter doth, for himself and his heirs, warrant and secure to the grantee the estate granted.

Covenants.

SECT. 6. Then the covenants, or conventions, which are clauses of agreement contained in a deed, whereby either party may stipulate for the truth of certain facts, or may bind himself to perform or give something to the other: Thus the granter may covenant that he hath a right to convey; or, for the grantee's quiet enjoyment, or the like: The grantee may covenant to pay his rent; to repair the premises, &c. If the covenantor covenants for himself

and his heirs, it is then a real covenant; and descends on the heirs, who are bound to perform it, if they have assets by descent, but not otherwise: If he covenants also for his executors and administrators, his personal assets, as well as his real, are pledged for the performance of the covenant, which makes such covenant a better security than any warranty; and it has therefore, in modern practice, totally superseded clauses of warranty.

Warranty, superseded by a person covenanting for himself, his heirs, executors, and administrators.

SECT. 7. Lastly comes the conclusion, which mentions the execution and date of the deed, or the time of its being given or executed. A deed is however good, although it has no date, or hath a false date, or even an impossible date, as the 30th February; provided the real day of its being delivered can be proved.

Conclusion.

SECT. 8. The requisites or essential solemnities of deeds are next to be considered; and these may be resolved into eight in number: The first of which is, that there be persons able to contract and be contracted with, for the purposes intended by the deed.* And also a thing or subject matter to be contracted for: All which must be

Requisites of a deed.

First, Persons able to contract, &c.

* Some persons are disabled by the common law, and some by statute; as infants,—Husbands and wives,—Ideots and persons of non-sane memory,—Persons under duress,—Aliens,—Ecclesiastical persons,—Corporations,—Persons born deaf and dumb,—And persons attainted of treason, felony, and premunire, &c. This disability is, however, in some, only in part, and temporary; in others, it is absolute, universal, and perpetual.

An infant has capacity to purchase, for it is intended for his benefit: But at his full age, he may either agree and perfect the purchase, or without any cause wave or disagree to it: And his heirs may wave it, if he did not agree after attaining his full age.

Infant.

Purchases, by an infant, voidable.

All gifts and grants by deed, made by an infant, that take effect by the livery of the hand; as where he makes a feoffment and gives livery of seizin with his own hand, are voidable by him and his heirs: And all gifts and grants by deed, made by an infant, that take not effect by the livery of the hand, are absolutely void.

Gifts and grants by deed, voidable, and void.

An infant is not bound by his covenant, unless for necessities, or by covenants in indentures of apprenticeship: Nor can an infant suffer a common recovery.

Not bound by his covenant, excepting for necessities, &c. cannot suffer a recovery.

expressed by sufficient names; so that in every grant, there must be a grantor, a grantee, and a thing granted: In every lease, a lessor, a lessee, and a thing demised.

Secondly, Must be founded on good consideration.

SECT. 9. The deed must be founded upon good and sufficient consideration: A deed made without any consideration, is, as it were, of no effect, for it is construed to enure or to be effectual only to the use of the grantor himself.

Grants by fine, must be avoided during minority.

If a grant made by an infant by fine is to be avoided, it must be done during his minority.

May make a testament.

An infant-female may make a will of her personal estate at twelve years of age: A male at fourteen: But they cannot devise their lands till they be twenty-one years of age, unless by special custom.

Cannot devise lands.

Husband and wife.

Wife cannot convey, but by matter of record.

Husband and wife may make a lease.

Husband may convey the wife's land during their joint lives.

All conveyances by a wife (excepting by some matter of record) are absolutely void:* And therefore a husband and wife cannot by deed-indented, feoffment, or other conveyance, dispose of their real property; nor bar the wife of her right of dower in the husband's lands; unless there be a special custom to warrant it: Such conveyance must be made, and such right barred, by a fine, or by common recovery: But a husband and wife can make a lease† to bind their heirs, of the land she has, and he holds in her right, for three lives, or twenty-one years: And if the husband holds a copy-hold estate in right of his wife, they may surrender it according to the custom of the place: The husband may also convey the land he has in right of his wife, during their joint lives, without her consent: And the absolute property of her personal-estate being vested in him by the marriage, the husband may give it away at his pleasure.

If husband and wife, for money, bargain and sell the wife's land, and afterwards levy a fine *come ceo* of it, the sale is good, and the wife cannot avoid it.

Cannot convey to his wife.

Husband and wife being but one person in law, the husband cannot convey an estate to his wife; nor can he covenant with her to stand seized to her use: But he may covenant with another so to do; or he may make a feoffment or other conveyance to another to her use; or surrender a copy-hold to her use.‡

* See Observations on Alienation by Matter of Record, Sect. 20.

† See Observations on the Several Species of English Deeds, Sect. 16.

‡ See Observations on Title to Things Personal by Marriage, Sect. 8.

SECT. 10. The deed must be written, or printed, on paper or parchment; and must have the regular stamps imposed on it by the several statutes for the increase of the public revenue. †

Thirdly, Must be on stamped paper, or parchment.

SECT. 11. The matter written must be legally and orderly set forth, that is, there must be words sufficient to specify the agreement, and bind the parties.

Fourthly, The matter must be legally set forth.

SECT. 12. Deeds must be read: This is necessary wherever any of the parties desire it; if it be not done on his request, the deed is void as to him: If he can, he ought to read it himself: If he be blind or illiterate, another should read it to him.

Fifthly, Must be read.

SECT. 13. The deed must be sealed by the party, and in most cases, such as grants of lands, &c. signed also.

Sixthly, Must be sealed, &c.

† See Abstract of these stamp-duties annexed.

A wife for the same reason cannot take any thing of the gift of her husband: But she can purchase lands without his consent, though, if he declares his dissent, the purchase is void.

Wife may purchase.

A wife cannot devise her lands either with or without the consent of her husband: But, with his licence, she can make a will of her personal estate.

Cannot devise.

Conveyances and purchases by idiots,—persons of non-sane memory,—and persons under duress,—though not actually void, are voidable.

Conveyances and purchases, by idiots, &c. voidable.

The case of an alien is peculiar, for he may purchase any thing, but he can hold nothing, except a lease for years of a house for the convenience of merchandise; in case he be an alien friend.

Alien can hold nothing.

Ecclesiastical persons, such as Archbishops, Bishops, Deans, Archdeacons, Prebends, Parsons, and Vicars, cannot make a lease of the lands they hold in right of their churches, § nor devise them.

Ecclesiastical persons cannot lease, or devise.

Corporations may purchase lands, yet, unless they have a licence to hold in mortmain, they cannot retain such purchase, and it shall be forfeited to the lord of the fee.

Corporations cannot hold lands, but in mortmain.

Persons attainted of treason, felony, and premunire, are incapable of conveying from the time of the offence, provided attainder follows; for such conveyance would deprive the King of his forfeiture, or the lord of his escheat.

Persons attainted of treason, &c. cannot convey.

§ See Observations on the Several Species of English Deeds, Sect. 17.

Seventhly,
Must be deli-
vered.

SECT. 14. The deed must be delivered by the party himself, or his certain attorney, which is expressed in the attestation "sealed and delivered:" A deed takes effect only from this tradition or delivery; for if the date be false, or impossible, the delivery ascertains the time of it: And if another person signs and seals the deed, and the party himself delivers it, he thereby adopts the signing and the sealing also, and makes them both his own.

Method of de-
livering.

SECT. 15. In Scotland, less attention is paid to the delivery, than to the signing and sealing of a deed; whereas the delivery being the most essential requisite, should be deliberately and formally made: The granter when he executes the deed, should, in the presence of the witnesses, say these words, or words of the same import, "I acknowledge this to be my hand and seal, and I deliver it" (giving the deed to the grantee, or to some other person in his behalf, or taking it up and laying it down again) "as my act and deed, for the purposes therein-mentioned."

Eightly, Must
be attested.

The last requisite to the validity of a deed, is the attestation or execution of it in the presence of witnesses.

SECT. 16. *In all devises of lands, or tenements by will, three witnesses at least are necessary: In other deeds, two are generally deemed sufficient. To the subscription of a deed by different persons, on different days, it is necessary that the same witnesses be witnesses to each subscription.

Registering
enrolment
deeds.

SECT. 17. These are the requisites essential to the construction of every deed of conveyance; but registering, or enrolment, is necessary to render some of them valid and effectual.

SECT. 18. By the statute 2d and 3d of Queen Ann, cap. 4. It is enacted, That a memorial of all deeds and conveyances, which from and after the 29th September 1704 shall be made and executed; and of wills and devises in writing, made, or to be made and published, where the deviser or testatrix shall die after the said 29th September, of, or concerning, or whereby, any honours, manors, lands, &c. in

* See Observations on Alienation by Devise, Sect. 1.

the west-riding of the county of York may be any ways affected in law or equity, may, at the election of the party or parties concerned, be registered in such manner as therein-mentioned: And that every deed or conveyance, that shall at any time after any memorial is so registered, be made and executed of the honours, manors, lands, &c. or any part thereof, comprised or contained in such memorial, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee, for valuable consideration; unless such memorial thereof shall be registered as by that act is directed, before registering the memorial of the deed or conveyance under which such subsequent purchaser or mortgagee shall claim: And every devise by will of the honours, manors, lands, &c. or any part thereof, mentioned or contained in any memorial so registered as aforesaid, that shall be made and published after the registering of such memorial, shall be adjudged fraudulent and void, against any subsequent purchaser or mortgagee for valuable consideration, unless a memorial of such will be registered as therein-mentioned.

SECT. 19. By statute 6th Ann, cap. 35. all deeds, conveyances, wills, and other encumbrances, that shall be made of, or that may affect, any honours, manors, lands, &c. within the east-riding of the county of York, or the town, and county of the town, of Kingston upon Hull, must be registered.

SECT. 20. By statute 7th Ann, cap. 20. all such deeds, as may affect any honours, manors, lands, &c. within the county of Middlesex, are appointed to be registered. And by statute 8th George II. cap. 6. all such deeds as may affect any honours, manors, lands, &c. within the north-riding of the county of York, are also appointed to be registered.

SECT. 21. By 27th Henry VIII. cap. 16. It is enacted " That Of bargain and sale.
 " no manors, lands, tenements, or other hereditaments, shall pass,
 " alter, or change from one to another, whereby an estate of inhe-
 " ritance or freehold shall be made or take effect, in any person or
 " persons, or any use thereof be made, by reason only of any bar-
 " gain and sale thereof, except the same bargain and sale be made by
 " writing indented, sealed, and enrolled, in one of the King's courts
 " of Record at Westminster, (*Chancery, King's bench, Common Pleas,*
 " *or Exchequer,*) or else within the same county or counties, where

THE ESSENTIAL REQUISITES OF ENGLISH DEEDS.

“ the same manors, &c. &c. so bargained and sold, lie or be; before
 “ the Custos-rotulorum, and two Justices of the peace, and the Clerk
 “ of the peace of the same county or counties, or two of them at the
 “ least, whereof the Clerk of the peace to be one; and the same enrolment to be had and made, within six months next after the date
 “ of the same writings indented. Provided always, that neither this
 “ act, nor any thing therein contained, shall extend to lands, tenements, &c. lying or being within any city, borough, or town-corporate, within this realm, wherein the Mayors, Recorders, Chamberlains, Bailliffs, or other Officer or Officers, have authority, or have lawfully used, to enrol any evidence, deeds, or other writings, within their precincts or limits.

Of conveyances to land, &c. in the British plantations, &c.

SECT. 22. All deeds and conveyances made of, or which may in any manner affect, lands, &c. in the British plantations or colonies in America, should be registered in the plantation or colony where the lands, &c. lie.

Deeds executed in the English form must be proved.

SECT. 23. Although by the law of England, under which all the British colonies are governed, no deed, which has not subsisted for thirty years, can prove itself; and all modern deeds, and other writings, produced as evidence in a court of judicature, must be attested and verified by *parole* evidence of witnesses; yet deeds executed in *other* countries, are nevertheless received and sustained in the British plantations and colonies in America, if proved by the affidavit in *writing* of one of the subscribing witnesses, properly authenticated by a Magistrate: Hence all deeds executed in Britain, which are designed to receive effect in the British plantations, or colonies in America, should be proved by the affidavit* of one of the subscribing witnesses, sworn before the Mayor, or other chief Magistrate, of a city, borough, or town-corporate; and such proof should be certified† under the common seal of such city, borough, or town-corporate, or the seal of the office of such Mayor, or other chief Magistrate.

* See Affidavits, No. 14, 15, 16.

† See Certificates, No. 2.

SECT. 24. By the law of England, a widow is entitled to be endowed* of all lands and tenements of which her husband was seized in fee-simple, or fee-tail, during the marriage; unless before marriage she accepted a jointure, which is a bar to her right of dower; and of this right a wife cannot bar herself by any deed of conveyance whatsoever: But if she joins her husband in levying a fine of his estate, she thereby bars her right of dower therein.† Hence, in England and Ireland, when the wife has not, by accepting a jointure before marriage, barred her right of dower, the husband cannot effectually dispose of, or encumber his estate otherwise than by levying a fine, in which the wife must join; nor can he, otherwise than by levying a fine, in which the wife must join, encumber the wife's estate.

SECT. 25. By levying a fine, and suffering a common recovery, the right of dower, estates-tail, and remainders and reversions thereupon expectant and depending, may, in England and Ireland, be barred and extinguished.‡

Right of dower and estates-tail, &c. barred by fine and recovery.

SECT. 26. Assurances by fine and recovery, are not, however, in use, in the British plantations and colonies in America; when therefore a deed intended to operate there, in the nature of a fine or recovery, is executed in England, or Ireland, it is the practice for the party granting and executing the deed, to acknowledge it, first, before a Justice of the court of Common Pleas, then before a Master in Chancery; and afterwards to enrol it in the high-court of Chancery: If there be a married woman a party to the deed, she is examined by the Justice privately, separate and apart from her husband, whether or not she executed the same voluntarily of her own free-will and accord, without any compulsion from her husband, or from any other person whomsoever; which acknowledgment or declaration is signed by the Justice, but not by the woman: And when a deed of this nature is executed in Scotland, it should be acknowledged before

Assurances by fine and recovery, not in use in the British plantations and colonies in America.

How deeds intended to supply their place are executed in England, &c.

How such deeds should be executed in Scotland.

* See Observations on Freehold Estates, Sect. 31.

† See Note under Sect. 8. and Observations on Alienation by Matter of Record, Sect. 28, 29, 31.

‡ See Observations on Alienation by Matter of Record, Sect. 40. 41. 31.

the Lord Provost, or other chief Magistrate of a city, or borough; by whom the wife, if there be one a party to the deed, should in like manner be privately examined, and her acknowledgment or declaration attested.*

SECT. 27. Such acknowledgment or declaration, being in some measure part of the deed, is generally endorsed on it: But an affidavit to the due execution, and the Magistrate's certificate, being distinct deeds, should be written on separate sheets of paper, bearing the regular stamps† imposed for such deeds by the British legislature. It is the practice in England, to place the affidavit in front of the certificate, and the certificate in front of the deed, in point of regularity.

Deeds which are to be carried into effect in the British plantations, &c. should be executed on stamped paper, &c.

SECT. 28. It is a maxim that every deed should be executed in the form,—with the solemnities,—and according to the laws of the country in which it is to receive effect; it has therefore been thought unnecessary in Scotland, to execute on stamped paper, deeds which were to be carried into effect in the British plantations, or colonies in America, as no stamp-duty is there imposed on paper or parchment: But that this is by no means unnecessary,—that it is indeed essentially requisite, appears from considering, that although the British plantations and colonies in America are distinct dominions, and no part of the mother-country, yet they are nevertheless subordinate to, and dependent upon her; subject to the Control, and, when particularly named, bound by the Acts of her parliament: And that, as appeals lie from the decisions of their courts of justice to the King in council in England, by the laws of England the validity of such deeds may eventually be tried, and in England they may consequently be destined to receive their complete and ultimate effect: And hence it is, that all deeds, designed to be carried into execution in his Majesty's plantations and colonies in America,

* See Acknowledgments, No. 2, 3.

† See Abstract of the Stamp-duties annexed, for the duty on Affidavits. There is no Stamp-duty imposed on Certificates of the nature here alluded to; it is however usual in England, to write such Certificates on paper, bearing the Stamp for Affidavites.

are, in England, executed on paper or parchment bearing the regular stamps imposed for such deeds, by the British legislature. Deeds which are to be carried into effect in Ireland should be framed and executed in the English form, on paper or parchment, bearing the stamps imposed for such deeds, by the Irish statutes.*

How deeds which are to receive effect in Ireland should be executed.

SECT. 29. In England, *written* evidence of the execution of writings, is, in some particular cases, admissible by statute:† As it is however a general principle in the law of England, that no deed which has not subsisted for thirty years, can be received in proof, unless it be attested and verified by *parole* evidence of witnesses; and, as persons resident in Scotland, cannot be compelled to appear in a court of judicature in England, all deeds executed in Scotland, which are to receive effect in England, should, if possible, be executed in the presence of witnesses generally resident in England, so as their authenticity may, when necessary, be legally established. It is true, that writings executed in Scotland, have been frequently received and sustained in England without any proof of their execution, but these have related merely to personal concerns of little consequence, or have been received *ex gratia*.

SECT. 30. By section 9th of the Act 5th George II. cap. 30. entitled, "An Act to prevent the committing of frauds by bankrupts," it is enacted, "That no discovery upon oath, or solemn affirmation, to be made by any bankrupt, or bankrupts, of his, her, or their, estate and effects, pursuant to this Act, shall entitle such bankrupt, or bankrupts, to the benefits allowed by this Act; unless the commissioners authorized by such commission, or the major part of them, shall, in writing, under their hands and seals, certify to the Lord Chancellor, or Lord Keeper, or Commissioners for the custody, of the Great-seal of Great Britain, for the time being, that such bankrupt, or bankrupts, hath, or have, made a full discovery of his, or her, estate or effects, &c. &c. and unless four parts in five, in number, and value, of the creditors of such bankrupt, or bankrupts, who shall be creditors for not less than

Abstract of the English bankrupt act, relative to the proof of the signing the bankrupt's certificate,—and to the attestation of affidavits, and of letters of attorney to vote in the choice of assignees.

* See Abstract of these Stamp-duties annexed.

† See next Section.

“ twenty pounds, respectively, and who shall have duly proved
 “ their debts, under such commission, or some other person by
 “ them, respectively, duly authorized thereunto, shall sign such cer-
 “ tificate, and testify their consent to such allowance and certificate,
 “ and to the said bankrupt’s discharge, in pursuance of this Act, to
 “ be also certified by such commissioners: *But the said commissioners*
 “ *shall not certify the same, till they shall have proof by affidavit,* or*
 “ *affirmation, in writing, of such creditors, or of the person by them*
 “ *respectively authorized for that purpose, signing the said certificate,*
 “ *and of the power and authority by which any person shall be autho-*
 “ *rized by any creditor to sign such certificate, for any creditor, &c.*
 “ *&c.*” And by section 26th it is enacted, “ That where any
 “ commission of bankrupt shall issue out, from and after the 24th
 “ June, 1732, the commissioners therein-named, or the major part
 “ of them thereby authorized, shall forthwith, after they have de-
 “ clared the person, or persons, against whom such commission shall
 “ issue, a bankrupt, or bankrupts, cause notice thereof to be given
 “ in the London Gazette, and shall appoint a time and place for
 “ the creditors to meet; which meeting, for the city of London, and
 “ all places within the bills of mortality, shall be at the Guildhall of
 “ the said city, in order to chuse an assignee or assignees of the said
 “ bankrupt’s estate and effects; at which meeting the said commis-
 “ sioners shall admit of the proof of any creditor’s debt, that shall
 “ live remote from the place of such meeting of the commissioners,
 “ by affidavit, or, being of the people called Quakers, by solemn
 “ affirmation; and also permit any person duly authorized, by letter
 “ of attorney from such creditors, oath or affirmation being made
 “ of the due execution thereof, either by an affidavit sworn, or
 “ affirmation made, before a master in Chancery, ordinary, or ex-
 “ traordinary, or before the commissioners *viva voce*; (which oath
 “ or affirmation they are hereby respectively authorized to admini-
 “ ster.) *And in case of creditors residing in foreign parts, such*
 “ *affidavits,† or solemn affirmations, to be made before a Magistrate*
 “ *where the party shall be residing, and shall, together with such*

* See Affidavits, No. 12.

† See Affidavits, No. 4 & 16.

"creditor's letter of attorney, be attested by a notary public,† to vote in the choice of an assignee, or assignees, of such bankrupt's estate and effects, in the place and stead of such creditor, &c."*

SECT. 1. THE several species or kinds of English deeds, fall now to be considered: But these remarks shall be confined to such deeds as principally serve to convey the property of lands and tenements, and are commonly denominated conveyances; for it would be tedious to examine the several instruments made use of in personal concerns, which fall under the definition of a deed; and besides it would be to little purpose; because the general nature and requisites of every deed, may be gathered from the foregoing observations.

The several species or kinds of deeds.

SECT. 2. Deeds of conveyance of lands and tenements may be divided into two sorts: Original, or primary; such as, feoffment, gift, grant, lease, exchange, partition: Derivative, or secondary; such as, release, confirmation, surrender, assignment, defeasance.

Of two sorts, original or primary.

Derivative or secondary.

SECT. 3. A conveyance by feoffment may be defined a gift of any corporeal hereditament: He that gives, or enfeoffs, is called the feoffer, and the person enfeoffed, is denominated the feoffee.‡

Original or primary, as, First, feoffment.

SECT. 4. But by the mere words of the deed, the feoffment is by no means perfected: Livery of seizin, or delivery of corporeal possession, of the land, or tenement, is absolutely necessary to complete the donation.

Livery of seizin necessary to complete a donation by feoffment.

SECT. 5. Feoffment is commonly applied to a conveyance of estates in fee.

Feoffment, applied to estates in fee.

* See Letters of Attorney, No. 16.

† See Certificates, No. 3.

‡ See Feoffment.

SEVERAL SPECIES OF ENGLISH DEEDS.

SECT. 6. Livery of feizin, or delivery of corporeal possession, of land, being rendered now almost universally unnecessary, by the modern conveyance by lease and release, the following observations shall be entirely restricted to the manner of performing it.

Livery of feizin
when necessary
to be made.

SECT. 7. Livery of feizin, by the common law, was necessary to be made upon every grant of an estate of freehold, in hereditaments corporeal, whether of inheritance, or for life only.

Either in deed
or in law.

Livery in deed,
what.

SECT. 8. Livery of feizin is either in deed or in law; livery of feizin in deed, is performed by the feoffer, or his attorney, with the feoffee, or his attorney, going to the land, or to the house, and there, in presence of witnesses, after declaring the contents of the deed of feoffment, the feoffer (if it be of land) delivers to the feoffee, (all other persons being out of the ground,) a clod or turf, or a twig or bough, saying, "I deliver these to you in the name of feizin of " all the lands and tenements contained in this deed." If it be of a house, the feoffer must take the ring or latch of the door, the house being quite empty, and deliver it to the feoffee in the same form, and then the feoffee must enter alone, shut the door, and then open it.

Livery in law,
what.

SECT. 9. Livery of feizin in law, is not made on the land, but in sight of it only; the feoffer saying to the feoffee, "I give you " yonder land, enter and take possession."

SECT. 10. Livery of feizin in law, cannot be given, or received, by attorney, but only by the parties themselves.

Secondly, Gift
properly appli-
ed to the crea-
tion of an estate-
tail.

SECT. 11. A conveyance by gift, is properly applied to the creation of an estate-tail,* and differs in nothing from a feoffment, but in the nature of the estate passing by it: He that gives the estate is called the donor: He that it is given to, the donee.

Thirdly, Grant.

SECT. 12. A conveyance by grant, is the regular method, by the common law, of transferring the property of things incorporeal, or things of which no livery can be made: Such as advowsons, com-

* See Gifts. No. 1.

mons, rents, reversions, &c.* Hence, corporeal hereditaments, are said to lie in livery; things incorporeal, to lie in grant.

Properly applied to advowsons, &c.

SECT. 13. A Conveyance by lease, is usually for life, for years, or at will, but always for a less time than the lessor hath in the premises: For if it be for the whole interest, it is more properly an assignment, than a lease.

Fourthly, Lease.

SECT. 14. Livery of seizin is necessary to one species of lease, viz. leases for life of corporeal hereditaments, but to no other.

Livery of seizin necessary to one species of lease.

SECT. 15. A tenant in tail may, by a lease, bind his issue in tail, but not those in remainder or reversion.

SECT. 16. A husband seized, in right of his wife, in fee-simple, or fee-tail, provided the wife joins in the lease, may bind her and her heirs thereby: † But there are many requisites to be observed to render such leases binding; The lease must be by indenture, and not by deed-poll, or parole: It must begin from the making, or day of making: If there be any old lease, it must be surrendered, or be within a year of expiring: It must not exceed the term of three lives, or twenty-one years, but may be for a shorter time: It must be of corporeal hereditaments, and not of such things as lie merely in grant: It must be of lands and tenements in use to be let for twenty years past: The usual and customary feorm, or rent, must be reserved yearly: They must not be made without impeachment of waste.

Requisites of a lease by a husband of the wife's estate.

SECT. 17. All colleges, cathedrals, and other ecclesiastical or eleemosynary corporations, and all parsons, and vicars, are restrained from making any leases of their lands; † unless under the following regulations,—They must not exceed twenty-one years, or three lives, from the making: The accustomed rent, or more, must be reserved yearly: Houses in corporations, or market-towns, may be let for forty years, provided they be not the mansion-houses of the lessors, nor have above ten acres of ground belonging to them, and that the

By colleges, &c. &c.

* See Grants.

† See Note under Sect. 8. of Observations on the Essential Requisites of English Deeds.

SEVERAL SPECIES OF ENGLISH DEEDS.

lessee be bound to keep them in repair; and they may also be alienated in fee-simple, for lands of equal value: Where there is an old lease it must expire within three years: No lease shall be made without impeachment of waste.

Fifthly, Exchange.

SECT. 18. A conveyance by exchange, is a mutual grant of equal interests, the one in consideration of the other: *The word exchange is so essentially requisite, and appropriated by law, to this case, that it cannot be supplied by any other.

Livery of seizin not necessary.

SECT. 19. The estate exchanged must be equal in quality, not of value, but of interest; as fee-simple, for fee-simple, and the like: The exchange may be of things that lie either in grant, or in livery: But no livery of seizin, even in exchange of freeholds, is necessary to perfect the conveyance; for each party stands in the place of the other, and occupies his right; and each of them hath already had corporeal possession of his own land; but entry must be made on both sides, for if either party die before entry, the exchange is void for want of sufficient notoriety.

Sixthly, Partition.

SECT. 20. A conveyance by partition, is when two or more joint-tenants, coparceners, or tenants in common, agree to divide the lands so held amongst them in severalty, each taking a distinct part: Here, they must all mutually convey and assure to each other, the several estates, which they are to take and enjoy separately.†

These are the several species of original, or primary, conveyances.

Secondary or derivative as,

SECT. 21. Those next to be considered, are of the secondary, or derivative, sort; which only serve to enlarge, confirm, alter, restrain, restore, or transfer, the interest granted by some original conveyance: As,

First, Release.

SECT. 22. ‡ Releases, which are a discharge, or conveyance, of a man's right in lands, or tenements, to another, who hath some

* See Exchange.

† See Partition.

‡ See Releases, No. 7. and Conveyances by Lease and Release.

former estate in possession: Releases may enure, either, First, By way of enlarging an estate; as, if there be a tenant for life, or years, remainder to another in fee; and he in remainder, releases all his right to the tenant for life, or years, and to his heirs; this gives him an estate in fee: The releasee must, however, be in possession of some estate for the release to work upon, otherwise the release will be void: Secondly, By way of passing an estate; as when one of two coparceners, releases all her right to the other; this passeth the fee-simple of the whole: Thirdly, By way of passing a right; as if a man disseized releases all his right to the disseizer: Fourthly, By way of extinguishment; as if my tenant for life, makes a lease to A for life, remainder to B and his heirs, and I release to A; this extinguishes my right to the reversion; and shall enure to the advantage of B's remainder, as well as of A's particular estate: Fifthly, By way of entry and feoffment; as if there be two joint disseizers, and the disseizee releases to one of them, he shall be sole seized; which is the same in effect, as if the disseizee had entered, and afterwards had enfeoffed one of the disseizers in fee: And here it may be observed, that when a man has in himself, the possession of lands, he must, at the common law, convey the freehold by feoffment and livery, which makes a notoriety in the country: But if he has only a future right, or interest, he may convey by a release to him who is already in possession of the lands; because the possession of the releasee, is matter of sufficient notoriety.

SECT. 23. A confirmation is a conveyance somewhat similar in its nature to a release; whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased: As if a tenant for life, leases for forty years, and dies during that term, the lease is voidable by him in reversion: But if he in reversion, has confirmed the estate of the lessee for years, before the death of the tenant for life, it is no longer voidable: Or, as if there be a tenant for life, or years, remainder to another in fee, and he in remainder, releases and confirms the estate to the tenant for life, or years, and to his heirs.

Secondly, Confirmation.

SECT. 24. No livery of seizin is necessary, to a conveyance by confirmation, to a tenant for life, or years, or at will, though a free-

Livery of seizin not necessary.

* See Confirmations.

hold passes thereby; since the reversion of the confirmer, and the particular estate of the confirmee, are one and the same estate, in which the confirmee is already in possession, so that any farther delivery of possession, would be vain and nugatory.

Thirdly, Surrender.

SECT. 25. A surrender, may be defined, "A yielding up of an estate for life, or years, to him that hath the immediate reversion, or remainder.* The surrenderer must be in possession, and the surrenderee must have a higher estate, in which the estate surrendered may merge; therefore a tenant for life, cannot surrender to him in remainder for years.

Livery of seizin not necessary.

SECT. 26. No livery of seizin is necessary in a surrender, for the same reason that it is not necessary in conveyances by release and confirmation.

Fourthly, Assignment.

SECT. 27. † An assignment is properly a transfer of the right one has in any estate, but it is usually applied to an estate for life, or years; and differs from a lease only in this, That by a lease one grants an interest less than his own, in assignments, he parts with the whole property.

Fifthly, Defeasance.

SECT. 28. ‡ A defeasance, is a collateral deed, made at the same time with a feoffment, or other conveyance; containing certain conditions, upon the performance of which, the estate then created may be defeated, or undone; and in this manner mortgages were formerly made: The mortgager enfeoffing the mortgagee, and he at the same time executing a deed of defeasance, whereby the feoffment was rendered void, on repayment of the money borrowed at a certain day.

⌘ SECT. 29. There still remain to be noticed, some few conveyances which derive their force and operation from the Act 27th Henry VIII. cap. 10. commonly called the statute of uses.

* See Surrenders. † See Assignments. ‡ See Defeasance.

⌘ In page 67. this, and the two following Sections are, by mistake, referred to, in place of Sections, 39, 40, 41.

SECT. 30. Uses, which were introduced into England in the reign of Edward III. were similar to trusts in their nature, or rather exactly the same; being a trust or confidence reposed by a proprietor of land, in a person who was tenant in the land, (called *terre-tenant*) whereby the tenant was authorized to dispose of the land, according to the instructions of *cestui que use*, that is, he to whose use the trust or confidence was reposed in the tenant, and who was to have the profit of the land: As where a feoffment was made to A and his heirs, to the use of, or in trust for, B and his heirs; A, the tenant in the land, by the common law, had the legal property and possession, but B, the *cestui que use*, was in equity to have the profits and disposal of the land.

Uses, what.

Cestui que use,
who.

SECT. 31. By these means, though a person could not at that time devise his lands by will, yet, as by enfeoffing another to his own use, he became possessed of a use only, which was deviseable by will, uses soon grew almost universal; particularly, during the civil commotions between the houses of York and Lancaster, through the desire men had of providing for their children by will, and of securing their estates from forfeiture.

SECT. 32. Uses being thus introduced, were continued to be sometimes very laudably, though often fraudulently, applied, to civil purposes:

SECT. 33. A man who had cause to sue for land, knew not against whom to bring his action, or who was the owner of it; So that creditors were defrauded of their debts, and tenants of their leases, &c. To remedy these inconveniences, a number of statutes were from time to time provided, and at length the aforesaid statute of 27th Henry VIII. cap. 10. which enacts, That "When any person shall be seized of lands, &c. &c. to the use, confidence, or trust, of any other person, or body politic, the person, or corporation, entitled to the use, in fee-simple, fee-tail, for life, for years, or otherwise, shall from thenceforth stand and be seized, or possessed, of the land, &c. of and in the like estates as they have in the use, trust, or confidence; and that the estate of the person so seized to uses, shall be deemed to be in him or them that have the use, in such quality, manner, form, and condition, as they had before in the use."

Statute of uses.

SEVERAL SPECIES OF ENGLISH DEEDS.

SECT. 34. The statute thus executes the use, or as it is sometimes said, it conveys the possession to the use, and transfers the use to the possession; thereby making *cestui que use* complete owner of the lands and tenements, as well at law, as in equity.

SECT. 35. The statute having thus annihilated the intervening estate of the feoffee, the courts of common law began to take cognizance of uses, instead of sending the party to seek relief as formerly in Chancery, and to consider them merely as modes of conveyance: But a few technical scruples, which the Judges could not easily get over, soon drove the parties again to the Chancery for relief: The Judges in the courts of law had determined, that no "use could be limited on a use," and that when a man bargains and sells his land for money, which raises a use by implication to the bargainee, the limitation of a farther use to another, was repugnant, and therefore void; so that on a feoffment to A and his heirs, to the use of B and his heirs, in trust for C and his heirs, they held that the statute executed only the first use, and that the second was a mere nullity; not adverting that the instant the first use was executed in B, he became seized to the use of C, which second use the statute might as well be permitted to execute as the first, and the estate might have thus been instantly transmitted through a hundred uses upon uses 'till finally settled in the last *cestui que use*: And as the statute mentions only such persons as were seized to the use of others, they determined that it did not extend to terms of years, or other chattel-interests, whereof the termor was only possessed; so that if a term of one thousand years was limited to A, to the use of, or in trust for, B, the use was not executed by the statute, but left at common law: But the court of Chancery determined, that though these last were not uses which the statute could execute, yet they still were trusts in equity, which in conscience ought to be performed: And trust estates are now considered, as equivalent to the legal ownership, are governed by the same rules of property, and liable to the same charges in equity, to which others are in law: A trustee is looked upon as the mere instrument of conveyance, and can in no shape affect the estate, unless he alienates it for a valuable consideration, without the knowledge of *cestui que use*, who being generally in possession of the land, such a thing can rarely happen.

SECT. 36. The only service therefore, to which this statute is now consigned, is that of giving effect, as was already observed, to a new species of conveyances; such as,

A new species of conveyances thereby introduced, as,

SECT. 37. A conveyance by a deed called a "covenant to stand seized to uses:*" by which a man seized of lands, covenants, in consideration of blood or marriage, that he shall stand seized of the same to the use of his child, wife, or kinsman, for life, in tail, or in fee:

First, By deed of covenant to stand seized to uses.

SECT. 38. Here the statute executes at once the estate; for the party intended to be benefited having thus acquired the use, he is thereby instantly put into corporeal possession of the land: But this conveyance can only operate when made on such weighty considerations, as those of blood, or marriage.

SECT. 39. Another species of conveyance introduced by this statute, is that of a bargain and sale of lands:† which is a kind of real contract, whereby the bargainer for some pecuniary consideration, bargains and sells, that is, contracts to convey the land to the bargainee, and to become by such bargain a trustee for, or seized to the use of, the bargainee, and then the statute completes the purchase, by transferring the use to the possession; or as it has been otherwise expressed, the bargain first vests the use, and then the statute vests the possession.

Secondly, By bargain and sale.

SECT. 40. No person can make a bargain and sale, who has not the actual possession at the time.

Bargainer must be in possession.

SECT. 41. There must be some consideration given, or said to be given, for the land; as the sum of ten shillings —, twenty shillings —, or a certain sum of money: A general consideration is not sufficient. A conveyance by bargain and sale is used when it is necessary to enrol ‡ the conveyance for the purpose of barring and

There must be a consideration given, &c.

* See Marriage Settlements, No. 2.

† See Bargain and Sale.

‡ See Observations on the Essential Requisites of English Deeds, Sect. 21.

SEVERAL SPECIES OF ENGLISH DEEDS.

cutting off entails, by suffering a common recovery: Conveyances of estates to bodies corporate, and of advowsons, must also be enrolled, and are therefore made by bargain and sale.

SECT. 42. At the time this statute was made, bargains and sales of chattel-interests were thought not worth regarding, and therefore were not directed to be enrolled; and they were also overlooked in framing the statute of uses: This omission gave rise to a third species of conveyance, by

Thirdly, By lease
and release.

SECT. 43. Lease and release,* which is thus executed; a lease, or rather a bargain and sale, upon some pecuniary consideration, for one year, is made by the tenant of the freehold, to the lessee or bargainee; now this, without any enrolment, not only makes the bargainer stand seized to the use of the bargainee, but vests in the bargainee, the use of the term for a year, and then the statute annexes the possession: The bargainee being thus in possession, is capable of receiving a release of the freehold and reversion, and this is granted to him the next day, which is held to supply the place of livery of seizin: And so a conveyance by lease and release is said to amount to a feoffment.

Deeds of revocation
of uses.

SECT. 44. Deeds of revocation of uses† may be said to owe their origin to this statute; for before that time the utmost that the common law would allow for the revocation of uses, was a deed of defeasance, coeval with the grant itself, (and thereof esteemed a part of it) upon events specifically mentioned; but they are now founded on a previous power reserved at the raising the uses, to revoke such as are then declared.

SECT. 45. These are the principal species of deeds, whereby estates may be conveyed; among which, the conveyances to uses, are by much the most frequent, though in these, there is certainly one palpable defect, the want of sufficient notoriety; so that those, who

* See Conveyances by Lease and Release.

† See Uses, No. 4.

wish to purchase, or to lend out their money, cannot discover, with any absolute certainty, what the estate, and the title to it, in reality are: And yet in England it is doubted, how far an establishment similar to that in Scotland, (where almost every act and event with regard to the transferring or encumbering real property are regularly entered on record) would tend to remove this defect, or be of real utility.

SECT. 46. Before closing these observations, on the several species of such English deeds as serve to convey the property of lands and tenements, it may not be improper to mention, such as are used to encumber lands, as bonds, recognifances, &c.

SECT 47. A *bond or obligation is a deed, whereby the obliger binds himself, his heirs, executors, and administrators, to pay a certain sum of money to another, on a day appointed: There is generally a condition added, that upon payment of the principal sum borrowed, (which is usually one half of the penal sum specified in the bond) with interest, the obligation shall be void, or otherwise shall remain in full force.

Bond.

SECT. 48. If the condition be not performed, the bond is forfeited, or becomes absolute at law, and charges the obliger while living; and, after his death, descends upon his heir, who (in defect of personal assets) is bound to discharge it, provided he has real assets by descent, as a recompense.

SECT. 49. Bonds being things in action are not assignable, though they are frequently assigned:† But as the assignee cannot put the same in suit in his own name, assignments must contain a letter of attorney, authorizing the assignee to receive and sue for the money in the assigner's name, so that it is in fact little more than a letter of attorney.

Bonds not assignable.

SECT. 50. A recognifance is an obligation of record, which a person enters into before some court of record, or Magistrate duly authorized, with condition to do some particular act: It differs

Recognifance.

* See Bonds.

† See Assignments, No. 11.

SEVERAL SPECIES OF ENGLISH DEEDS.

from a bond chiefly in this, that it is an acknowledgment of a former debt upon record, whereas the bond is the creation of a new debt, or obligation *de novo*.

SECT. 51. There are other recognifances of a private kind, which have been already explained, and shown to be a charge upon real property.*

* See Observations on Estates upon Condition, Sect. 16, 17.

OBSERVATIONS

ON

ALIENATION BY MATTER OF RECORD.

SECT. 1. **A**SSURANCES by matter of record, are such as do not entirely depend on the act or consent of the parties themselves, but such as are established and preserved by a court of Record: Of this nature are fines, and recoveries.

By fine.

SECT. 2. A fine seems to signify, an acknowledgment of a feoffment on record: By which is to be understood, that it has at least the same force and effect with a feoffment in the conveying and assuring of lands, though it is one of those modes of transferring estates of freehold by the common law, in which livery of seizin is not necessary to be actually given, the supposition and acknowledgment thereof in a court of Record, however fictitious, inducing an equal notoriety: Originally, it was founded on an actual suit commenced at law for the recovery of the possession of land, and the possession thus gained, was found to be so sure and effectual, that fictitious actions were, and continue to be every day, commenced for the sake of obtaining the same security.

A fine, what.

SECT. 3. A fine is so called, because it puts an end, not only to the suit thus commenced, but also to all other suits and controversies concerning the same matter.

Why, so called.

How levied.

SECT. 4. A fine is thus levied, or carried on: The party to whom the land is to be conveyed or assured, commences an action or suit at law against the other, generally an action of covenant, by suing out a writ or *præcipe* called a writ of covenant, the foundation of which writ is a supposed agreement or covenant that the one shall convey the lands to the other, and on the breach of which supposed agreement the action is brought: The suit being thus commenced, then follows,

Licentia concordandi.

SECT. 5. The *licentia concordandi*, or leave to agree the suit: For the defendant is supposed immediately to make overtures of peace and accommodation to the plaintiff, who accepts them, but having, upon suing out the writ, given pledges to prosecute the suit, which he endangers if he deserts it without licence, he applies to the court for leave to make the matter up, which is readily granted.

Concord or agreement.

SECT. 6. Then comes the concord or agreement itself, which is usually an acknowledgment* from the deforciant, or him who keeps the other out of possession, that the lands in question belong to the plaintiff; and from this acknowledgment or recognition of right, the party levying the fine is called the cognizor, and he to whom it is levied the cognizee: This acknowledgment must be made either openly in the court of Common Pleas, or before one of the Judges of that court, or else before Commissioners in the country, empowered by a special authority called a writ of *dedimus potestatem*; which Judges or Commissioners are bound by statute 18th Edward I. to take care that the cognizor, be of full age, sound memory, and out of prison: If the cognizor, be a *femme couverte*, she must be privately examined, whether she does it freely and willingly, or by compulsion of her husband.

SECT. 7. By these acts all the essential parts of a fine are completed, and if the cognizor dies the moment after the fine is acknowledged, provided it be subsequent to the day on which the writ is made returnable, still the fine shall be carried on in all its remaining parts; of which the next is,

* See Acknowledgments, No. 1.

SECT. 8. The note of the fine; which is only an abstract of the writ of covenant, and the concord; naming the parties, the parcels of land, and the agreement. Note of the fine.

SECT. 9. And then the foot or the conclusion of the fine; which includes the whole matter, reciting the parties, day, year, and place, and before whom it was acknowledged or levied. Foot of the fine.

SECT. 10. By several subsequent statutes other solemnities are superadded, in order to render the fine more public:

SECT. 11. By statute 1st Richard III. cap. 7. confirmed and enforced by the 4th Henry VII. cap. 24. it is enacted, That the fine, after engrossment, shall be openly read and proclaimed in court, sixteen times; viz. four times in the term in which it is made, and four times in each of the three succeeding terms, during which time all pleas shall cease; but this is reduced to once in each term by 31st Elizabeth, cap. 2. and these proclamations are endorsed on the back of the record. Must be proclaimed once in each term.

SECT. 12. Fines are of four kinds: First, What in law French, is called a fine "*sur cognizance de droit, come ceo que il ad de son done;*" or, a fine upon acknowledgment of the right of the cognizee, as that which he hath of the gift of the cognizor. Fines are of four kinds.

SECT. 13. This is the best and surest kind of fine; for thereby the deforciant, in order to keep his covenant with the plaintiff of conveying to him the lands in question, and at the same time to avoid the formality of an actual feoffment and livery, acknowledges in court a former feoffment or gift in possession, to have been made by him to the plaintiff: This fine is therefore said to be a feoffment of record, the livery thus acknowledged in court being equivalent to an actual livery, so that this assurance is rather a confession of a former conveyance, than a conveyance now originally made; for the deforciant or cognizor acknowledges the right to be in the plaintiff or cognizee, as that which he hath (*de son done*) of the proper gift of himself the cognizor. Nature of a fine, sur cognizance de droit, come ceo que il ad de son done.

SECT. 14. Secondly, a fine "*sur cognizance de droit tantum*" or, upon acknowledgment of the right merely, not with the circum- Nature of a fine, sur cognizance de droit tantum.

stance of a preceding gift from the cognizor: This is commonly used to pass a reversionary interest in the cognizor; for of such reversions there can be no feoffment or donation with livery supposed, as the possession during the particular estate belongs to a third person: It is thus worded, "That the cognizor acknowledges the right to be in the " cognizee, and grants for himself and his heirs, that the reversion, " after the particular estate determines, shall go to the cognizee.

Nature of a fine,
sur concessit.

SECT. 15. Thirdly, A fine "*sur concessit*," is where the cognizor in order to make an end of disputes, though he acknowledges no precedent right, grants to the cognizee an estate of new, usually for life, or years, by way of supposed composition: And this may be done reserving a rent or the like, for it operates on a new grant.

Nature of a fine,
sur done, grant, et render.

SECT. 16. Fourthly, A fine "*sur done, grant et render*," is a double fine; comprehending the fine *sur cognizance de droit come ceo*, &c. and the fine *sur concessit*; and may be used to create particular limitations of estates; whereas the fine *sur cognizance de droit come ceo*, &c. conveys nothing but an absolute estate, of inheritance, or at least of freehold: In this last species of fine, the cognizee, after the right is acknowledged to be in him, grants back again or renders to the cognizor, or perhaps to a stranger, some other estate in the premises.

The force and
effect of a fine.

SECT. 17. The force and effect of a fine, are now to be considered; and these principally depend on the statutes 4th Henry VII. cap. 24. and 32d Henry VIII. cap. 36. whereby the right of all strangers whatsoever is bound, unless they make claim, not within one year and a day as by the common law, but, within five years after proclamations made; excepting *femmes couvertes*, infants, prisoners, persons beyond seas, and such as are not of sound mind; who have five years allowed to them, and their heirs, after the death of their husbands, their attaining full age, recovering their liberty, returning to England, or being restored to sound mind.

SECT. 18. By the last mentioned statute 32d Henry VIII. It is declared, that a fine levied by any person of full age, to whom, or to whose ancestors, lands have been entailed, shall be a perpetual bar to them, and their heirs, claiming by force of such entail, unless the fine be levied by a woman after the death of her husband, of lands

which were by the gift of him, or his ancestors, assigned to her in tail for her jointure; or unless it be of lands entailed by Act of Parliament, and whereof the reversion belongs to the crown.

SECT. 19. Hence it appears that a fine is a solemn conveyance on record, from the cognizor to the cognizee; and that the persons bound by a fine are parties, privies, and strangers.

Is a solemn conveyance. Who bound by it.

SECT. 20. The parties to a fine are the cognizors and cognizees; and these are immediately concluded by the fine, and barred of any latent right they may have; even though under the legal impediment of coverture: And indeed, as this is almost the only act that a *femme couverte* is permitted by law to do, (and that because she is privately examined as to her voluntary consent which removes the general suspicion of compulsion by her husband,) it is therefore the usual, and almost only safe method, whereby she can join in the sale, settlement, or encumbrance of an estate.

First, The parties.

SECT. 21. Privies to a fine are such as are any way related to the parties who levy the fine, and claim under them by any right of blood or other right of representation: Such as the heirs general of the cognizee, the issue in tail, the vendee, the devisee, and all others who must make title by the persons who levied the fine.

Secondly, Privies.

SECT. 22. A stranger to a fine is every person in the world, except the parties and privies, who are all bound by a fine, unless within five years after proclamations made, they interpose their claim; provided they are under none of the legal impediments before recited, and have then a present interest: Persons that have not a present but a future interest, as those in remainder and reversion, have five years allowed them to claim from the time that such right or interest accrues.

Thirdly, Strangers.

SECT. 23. When the cognizance of a fine is to be taken in the country, it is most frequently taken before Commissioners, or persons authorized by a writ called a *dedimus potestatem*; who ought to take care, that they know the cognizors, and that they are capable by law*

How the cognizance of a fine is to be taken in the country by commissioners.

* Any person, male or female, body sole or corporate, that hath capacity to grant by deed, may levy a Fine, and be a Cognizor therein.

to acknowledge the fine: And if a husband and wife be cognizors, the wife ought to be examined, solely and apart from her husband, whether she does it of her own free will, or by threats and compulsion.

Must be certified by the commissioners.

SECT. 24. When the cognizance or acknowledgment is taken, the same must be certified by the Commissioners, under their hands and seals.*

All the commissioners must take the cognizance.

SECT. 25. If the *dedimus* be to two or more Commissioners, they must *all* take the cognizance.

SECT. 26. By a rule of the court of Common Pleas, made in the 13th year of the reign of George I. it was ordered, That no fine whatsoever taken and acknowledged before any Commissioners by virtue of a writ of *dedimus potestatem*, should be allowed to pass, unless some person present when such fine was taken and acknowledged, did personally appear before the Lord Chief Justice, or some other Justice of that court, and was examined on oath touching the due execution thereof, and particularly whether such persons knew the parties acknowledging the fine.

An affidavit must be made, to the due acknowledgment of a fine.

SECT. 27. But this rule not having answered the purpose for which it was intended, in Hilary term 17th George II. It was ordered by the said court, that instead of an oath made *viva voce* of the due acknowledgment of such fines, an affidavit or affidavits in writing on *parchment*, shall be made and annexed to every fine so taken as aforesaid; in which affidavit or affidavits the person or persons making the same shall swear, that he or they knew the party or parties acknowledging such fine, that the same was duly signed and acknowledged, that the party or parties acknowledging the same were of full age, and competent understanding, that the *femmes couvertes* (if any) were solely and separately examined, apart from their husbands, and freely and voluntarily consented to, and acknowledged the same, and that the cognizor or cognizors, and every of them, knew the same to be a fine to pass his, her, or their estate, or estates;

* See Acknowledgments, No. 1. for a form of the Concord or Acknowledgment, which is certified by the Commissioners thus, "Taken and acknowledged the — day, &c.

which fine, together with such affidavit or affidavits annexed, shall be transmitted to the Lord Chief Justice, or some other Justice of the said court: And by a rule of the said court made in Hilary term 26th and 27th George II. It was ordered, that in the affidavit or affidavits made in pursuance of the foregoing rule, the person or persons so making the same, should not only swear as they are directed by the said rule, but also, that the fine was duly signed and acknowledged upon the day and year, or days and years, mentioned in the caption, And, if there should be any rasure or interlineation in the body, or caption, of such fine, that such rasure or interlineation was made before the party or parties signed the said fine, and before the caption was signed by the Commissioners; And which affidavit or affidavits shall be annexed to the fine, and transmitted to the said Lord Chief Justice, or to some other Justice of the said court.*

SECT. 28. In general, every deed executed by a husband, or by a husband and wife, respecting the conveyance or encumbering of land, in England, or Ireland, ought to contain a covenant for levying a fine; because, if the land be the wife's, she cannot otherwise dispose of it;† if it be the husband's, and he made no settlement before marriage in favour of the wife, in bar of her dower, it is necessary in order to bar it.

SECT. 29. If a wife be within age, and she and her husband levy a fine of her land, they may afterwards reverse it by a writ of error.

A fine levied by a wife under age, may be reversed.

SECT. 30. No fine shall bar any estate in possession, remainder, or reversion, which is not divested and put to a use or right at the time of levying the fine; And therefore, if one levies a fine of my land, whilst I am in possession of it, this fine will not hurt me; as if A be tenant in tail, remainder to B in tail, and A sells the land by

A fine shall not bar any estate in possession, &c. which is not put to a use or right at the time.

* See Affidavits, No. 17.

† See Note under Section 8. of Observations on the Essential Requisites of English Deeds. Assurances by Fine are not however in use in the British West India Islands, &c. See Observations on the Essential Requisites of English Deeds, Sect. 26.

deed indented and enrolled, and levies a fine to the bargainee, he in remainder is not barred, although five years pass without claim, for by law both A and B are in possession.

A fine will not bar him in remainder or reversion.

SECT. 31. A fine will bar the wife's dower, and the heir in tail, but not him in remainder and reversion.*

By common recovery.

SECT. 32. Another species of assurance by matter of record, is a common recovery; the nature of which shall be first considered, and then its force and effect.

A common recovery what.

How suffered.

With a single voucher.

SECT. 33. A common recovery is so far like a fine, that it is a suit or action either real or fictitious, wherein lands are recovered from a tenant of a freehold; which recovery, being a supposed adjudication of the right, binds all persons, and vests in the recoverer a free and absolute fee-simple. A recovery however is not immediately compromised, like a fine, but carried on through sundry regular stages of proceeding. For illustrating whereof, Let it be supposed that A, a tenant of a freehold, is desirous to suffer a common recovery, in order to bar all entails, remainders, and reversions, expectant thereupon, and to convey the same in fee-simple to B: To effect this, B must bring an action against A for the lands; He accordingly sues out a writ, called a *præcipe quod reddat*, because these were its initial, or most operative words, when the law proceedings were in Latin: In this writ, B alleges, that the defendant A, (called the tenant) has no legal title to the land, but that he came into possession after one C had turned the demandant B out of it; whereupon the tenant A appears, and prays that one D, who is supposed at the original purchase to have warranted the title to A, may be called to defend the title which he so warranted; this is called the voucher, *vocatio*, or calling, of D to warranty; D the vouchee appears, and defends the title; upon which B the demandant desires leave of the court to imparl, or confer with D the vouchee in private, which is

* See Sect. 22.—40.

allowed him; soon afterwards B returns to court, but D the vouchee disappears; whereupon judgment is given for the demandant B, now called the recoverer, to recover the lands in question against the tenant A, who is now the recoveree; and A has judgment to recover of D, lands of equal value, in recompense for the lands so warranted by him, and lost by his default; this is called the recompense, or recovery in value; but D having no lands of his own, being usually the crier of the court, and who from being thus frequently vouched is called the common vouchee, A has only a nominal recompense for the lands recovered from him by B: So that this collusive recovery operates as a conveyance in fee-simple by A, to B the purchaser.

SECT. 34. The recovery now described is with a single voucher only; but sometimes it is with a double, triple, or farther, voucher, as the exigency of the case may require: And indeed it is now usual to have a recovery with a double voucher at least, by first conveying an estate of freehold to an indifferent person, against whom the *præcipe* is brought, who vouches the tenant in tail, and the tenant in tail vouches the common vouchee: For, if a recovery be had immediately against the tenant in tail, it bars only such estate in the premises of which he is then actually seized; whereas, if it be against another person, and the tenant in tail be vouched, it bars every latent right and interest which he may have in the lands recovered: If therefore A, be tenant of a freehold in possession, and C, be tenant in tail, in remainder, A vouches C, and C vouches the common vouchee, who is always the last person vouched, and always makes default; whereby the demandant B recovers the land against the tenant A, and A recovers a recompense of equal value against C the first vouchee, who recovers the like from the common vouchee, against whom such ideal recovery in value is always ultimately awarded.

Sometimes with a double, triple, or farther, voucher.

SECT. 35. This supposed recompense in value, is the reason why the issue in tail is held to be barred by a common recovery; for, if the recoveree should ever obtain a recompense in lands from the common vouchee, (which there is a possibility in contemplation of law of his doing) these lands would supply the place of those recovered from him, and would descend to the issue in tail.

The reason why the issue in tail, is barred by a common recovery.

Effect of common recoveries.

SECT. 36. Hence common recoveries appear to be an absolute bar not only of all estates-tail, but of remainders and reversions expectant on the determination of such estates: So that a tenant in tail may, by this method of assurance, convey the lands held in tail, to the recoverer, his heirs and assigns, absolutely free and discharged of all conditions and limitations in tail, and of all remainders and reversions.

Of a recovery with single voucher.

SECT. 37. A recovery with single voucher bars only such estate as the tenant has in possession at the recovery.

With double voucher.

SECT. 38. A recovery with double voucher bars the first voucher, and his heirs, of every such estate as was at any time in him, or in any of his ancestors; and all those in remainder or reversion.

With triple voucher.

SECT. 39. The intention of a recovery with a triple voucher is, to make a perpetual bar of the estate of the tenant, and of every such estate of inheritance as at any time had been in the first, or second vouchers, or any of them, or their ancestors, and of every reversion expectant thereupon.

Why a recovery is a better assurance than a fine.

SECT. 40. A recovery is a better assurance than a fine, for though a fine bars the heir in tail, it does not bar him in remainder or reversion; whereas, a recovery bars them all.

A fine and recovery both necessary in some cases.

SECT. 41. Sometimes, both a fine and recovery are necessary to enable a person effectually to dispose of his estate: As for example, a husband, having one son, wishes to dispose of an estate which has been devised to him for life, and after his decease to the heirs male of his body; to enable him to do this, he must, unless he made a settlement on his wife before marriage in bar of her dower, not only levy a fine to bar the right of dower, but he must also suffer a recovery to bar the son of the estate so limited to him: The necessary deeds in this case are indentures of lease and release, and bargain and sale for the purpose of enrolment; to the release, and bargain and sale, the husband, his wife, and son, must be parties, and covenant to levy a fine, and suffer a recovery, which fine when levied, and recovery when suffered, are thereby declared to be and enure to the use of the purchaser.

SECT. 42. When the tenant or vouchee resides in Scotland, or at a distance from London, he may appear and suffer the recovery by attorney; in which case a *dedimus potestatem* will be granted to take the warrant of attorney.*

How a recovery may be suffered by a person resident in Scotland.

SECT. 43. Fines and recoveries are not in use in his Majesty's plantations or colonies in America.†

Fines and recoveries not in use in the British W. India islands, &c.

SECT. 44. Under this head, a few observations may be made on deeds to lead or declare the uses of fines, and of recoveries.

SECT. 45. If fines be levied, or recoveries suffered, without any good consideration, and without any uses declared, they, like other conveyances, enure only to the use of him who levies or suffers them.

SECT. 46. If these deeds are made previous to the fine or recovery, they are called deeds to lead the uses; if after, deeds to declare them: As if A, a tenant in tail, with remainder to himself in fee, would settle his estate on B for life, remainder to C in tail, remainder to D in fee; this is what he cannot by law effectually do, while his own estate-tail exists; He therefore covenants to levy a fine, (or if there be remainders over, to suffer a recovery) to E, and that the same shall enure to the uses mentioned in the deed: This is a deed to lead the uses;‡ and the fine when levied, or recovery when suffered, shall enure to the uses so specified and no other; for though E the cognizee or recoveree, hath a fee-simple vested in him by the fine, or recovery, yet by the operation of this deed, he becomes a mere instrument or conduit pipe, seized only to the use of B, C, and D, in successive order, which use is immediately executed by the statute of uses.

Deed to lead the uses of a fine, and recovery, what.

* See Letters of Attorney, No. 20.

† See Observations on the Essential Requisites of English Deeds, Sect. 26.

‡ See Uses, No. 1, 2.

Deed declaring
the uses of a fine
or recovery,
what.

SECT. 47. If a fine be levied, or recovery suffered, without any previous settlement, and a deed be afterwards made between the parties, declaring the uses to which the same shall be applied; this is a deed to declare the uses,* and will be equally good, as if a deed had been made before levying the fine, or suffering the recovery.

Uses either in
esse, or in *posse*,
or contingency,
and express or
implied.

SECT. 48. Uses are either in *esse*, or in *posse* or contingency; and express or implied.

Uses in *esse*,
what.

SECT. 49. Uses in *esse*, are either in possession, remainder, or reversion: As when a feoffment is made to A, to the use of B, and his heirs, or to the use of B, thereafter to the use of C, and the heirs male of his body, and thereafter to the use of D, and his heirs, for ever.

Uses in *posse*,
what.

SECT. 50. Uses in *posse* or in contingency, may happen to be in possession, remainder, or reversion: As where a use is limited to A for life, thereafter to his first born son in tail, it is only a possible or contingent use, for A may never have a son.

An express use,
what.

SECT. 51. An express use is, where the use is openly declared and expressed between the parties: As when a feoffment of land is made to A, and his heirs, to the use of B, and the heirs of his body, or to the end and intent that B and his heirs shall receive the profits, or the like.

An implied use,
what.

SECT. 52. An implied use is, when the use is not declared by the parties, but left to the construction, and made by the operation of law: As when one seized of land makes a feoffment in fee, levies a fine, or suffers a common recovery of it to another, without any consideration, and without declaring to what use and intent it shall be; by the construction of law, the feoffment so made, fine so levied, or recovery so suffered, shall be to the use of the feoffer, cognizor, or recoverer: But, if there be any consideration given or paid, it shall be to the use of the feoffee, cognizee, or recoverer.

* See Uses, No. 3.

OBSERVATIONS

ON

ALIENATION BY SPECIAL CUSTOM.

SECT. 1. **A**LIENATION or assurance by special custom, is confined to copy-hold lands, and such customary estates as are held in ancient demesne, or in manors of a similar nature, and is generally made by surrender; though in some manors, by special custom, recoveries may be suffered of copy-holds, which differ in nothing material from recoveries of free-land, but in being suffered in the court-baron of the manor.

SECT. 2. The manner of surrendering in most manors is this, The tenant goes to the steward, either in court, or, if the custom permits, out of court; or to two customary tenants of the same manor, provided he is warranted by custom so to do; And there by delivering up a rod, a glove, or other symbol, as the custom directs, resigns into the hands of the lord, by the hands and the acceptance of his steward, or of the said two tenants, all his interest and title to the estate; in trust, to be again granted out by the lord to such persons, and for such uses as are named in the surrender, and the custom of the manor will warrant.*

* See Surrenders, No. 5.

ALIENATION BY SPECIAL CUSTOM.

If the surrender be made out of court, then at the next or some subsequent court, the jury or homage must present and find it upon their oaths; which presentment, is an information to the lord or his steward, of what has been transacted out of court.

SECT. 3. On such surrender in court, or presentment of a surrender made out of court, The lord, by his steward, grants the lands again to *cestui que use*, to hold by the ancient rights and customary services, and thereupon admits him tenant to the copy-hold, according to the form and effect of the surrender, which must be exactly pursued; And this is done by delivering up to the new tenant, the rod, or glove, in the name and as the symbol of corporeal seizin of the lands and tenements; upon which admission the tenant pays a fine to the landlord, according to the custom of the manor, and takes the oath of fealty.

OBSERVATIONS

ON

ALIENATION BY DEVISE.

SECT. I. **A**LIENATIONS by devise,* may be considered as conveyances declaring the uses to which the lands shall be subjected, after the devisor's death; with this difference, that in conveyances *inter vivos*, the actual subscription of the witnesses is not required by law, though it is prudent for them to subscribe, in order to assist their memory when living, and to supply their evidence when dead: Whereas by statute 2d Car. II. cap. 3. it is enacted, " That all devises and bequests of any lands or tenements, deviseable " either by force of the statute of wills, or by this statute, or by " force of the custom of Kent, or the custom of any borough, or " any other particular custom, shall be in writing, and signed by the " party so devising the same, or by some other person in his presence " and by his express direction, and shall be attested and subscribed " in the presence of the deviser, by three or four credible witnesses, " or else they shall be utterly void and of none effect." And similar solemnities are requisite to revoke a devise.

By devise.

* See Observations on Estates in Remainder and Reversion, Sect. 12 to 16. inclusive, and Wills, No. 1.

ALIENATION BY DEVISE.

SECT. 2. In the construction of this statute it has been adjudged, that the deviser's name, written with his own hand at the beginning of the deed, as, I "*Jonathan Adams*" do make this my last will and testament, is sufficient without signing at the bottom.

SECT. 3. Upon the notion that a devise of lands is merely a species of conveyance, is founded this distinction between such devises, and testaments of personal-chattels, that the latter transfers whatever the testator dies possessed of; the former, only conveys such real estates as were the property of the deviser at the time of executing and publishing his will.

A copy-hold cannot be devised but may be surrendered.

SECT. 4. A copy-hold cannot be devised, it may however be surrendered to the use of a person's last will and testament; and in his will, the deviser may declare his intention, and name a devisee, who will be entitled to admission.

OBSERVATIONS

ON

TITLE TO THINGS PERSONAL BY MARRIAGE.

SECT. 1. **B**Y Marriage all those chattels which formerly belonged to the wife, are vested in the husband, with the same degree of property, and with the same powers, as the wife, when sole, had over them: But he acquires a title only to the rents and profits of her real estate, during the coverture.*

SECT. 2. Chattels, are either real, or personal; and chattels-
personal, are either things in action, or things in possession.

Chattels either
real or personal.

SECT. 3. A chattel-real, (as a lease for years) is vested in the husband, not absolutely, but *sub modo*; for though he shall receive all the rents and profits of it, may sell, surrender, or dispose of it during the coverture; and though it be liable to execution for his debts, and be to all intents and purposes his own, if he survives the wife; yet, if he makes no alteration in the property, during his life, by which it may be transferred from the wife, and dies before her, it shall revert in the wife.

Chattel-real,
what.

* See Observations on Freehold Estates, Sect. 29.

Chattels-personal or things in action, what.

SECT. 4. Chattels-personal, or things in action, as debts upon bond, contracts, and the like, are so far vested in the husband, that he may have them if he pleases, that is, if he reduces them to possession by receiving or recovering them at law: But if he dies before he has recovered or reduced them to possession, they shall remain to the wife.

Chattels-personal, or things in possession, what.

SECT. 5. In chattels-personal, or things in possession, as ready money, jewels, household-goods, and the like, the husband hath an immediate and absolute property.

Wife acquires a property in the husband's goods

SECT. 6. By marriage, the wife acquires a property in some of the husband's goods; these are called her paraphernalia, and signify such apparel and ornaments as are suitable to her rank and degree, to which she becomes entitled on the death of her husband, over and above her jointure, or dower.*

Husband, may convey or mortgage the wife's estate, for their joint lives, &c.

SECT. 7. A husband, by virtue of his marriage, obtains no other interest in his wife's estates of inheritance, than an estate of freehold, in her right, for their joint lives, in case there be no issue of the marriage, and for his life, as tenant by the courtesy, if there be; Hence, he alone cannot convey, or make a valid mortgage thereof, for any longer period; yet he may grant a lease thereof for three lives, or twenty-one years.†

Agreements by a man and woman before marriage extinguished by the marriage.

SECT. 8. A husband and wife are but one person in law, for the very existence of the wife is merged or incorporated in that of the husband; so that all agreements made by them before marriage, are extinguished by the marriage. Hence, a husband cannot convey an estate to his wife; nor can he covenant with her, to stand seized to her use; but he may covenant with another so to do; or he may surrender a copy-hold to her use; or make a conveyance, or feoffment, to another to her use.‡

* See Observations on Freehold Estates, Sect. 30.

† See Observations on the Several Species of English Deeds, Sect. 16.

‡ See Note under Sect. 8. of Observations on the Essential Requisites of English Deeds.

OBSERVATIONS
ON
TITLE TO THINGS PERSONAL,
BY
TESTAMENT AND ADMINISTRATION.

By Testament.

THE method of acquiring things personal, by testament and administration, falls now to be considered.

SECT. 1. A testament may be defined, a full and complete declaration, of what one wills should be done with his personal property, after his death.*

A testament,
what.

SECT. 2. Testaments are divisible into two sorts, written, and verbal or nuncupative.

Divisible into
two sorts.

SECT. 3. A written testament needs not any witnesses of its publication, provided it be written by the testator himself; nay, although it should be written by another, and not even signed by the testator,

A written testa-
ment, what.

* See Wills No. 2, 3, 4. for Precedents of a Testament, Nuncupative Will, and Codicil.

TITLE TO THINGS PERSONAL BY TESTAMENT.

yet, if it can be proved to have been written according to his instructions, and to have been approved by him, it will be a good testament: But the safest and most prudent way is, to have it signed, or sealed by the testator, and published in the presence of witnesses. No testament is of any effect, till after the death of the testator.

Nuncupative
will.

SECT. 4. By a verbal or nuncupative will, the whole personal estate of the testator, may be bequeathed; but such will is not good in law, where the estate bequeathed exceeds thirty pounds sterling, unless it be proved by three witnesses, present at the making thereof; and unless they, or some of them, were specially required to bear witness by the testator; and unless it was made in his last sickness; in his own habitation or dwelling house; or where he had been previously resident ten days at the least; except he became sick on a journey, or from home, and died without returning home.

SECT. 5. No nuncupative will shall be proved by witnesses, after six months from the making, unless it was put in writing within six days thereafter; lest, at so long a period from the testator's death, the words should escape the memory of the witnesses: Nor shall it be proved till fourteen days after the death of the testator, lest the family of the testator should be put to inconvenience, or be surprised.

Codicil, what.

SECT. 6. A codicil is an explanatory or alterative addition or supplement to a will, annexed to, and to be taken as part of it, and may be either written, or nuncupative.

An appointment of an executor, an essential requisite to a testament.

SECT. 7. An appointment of an executor, is an essential requisite to a testament, and all persons are capable of being executors who are capable of making wills, and many others; as *femmes couvertes*, and infants, even infants unborn may be named executors.

SECT. 8. An executor may be appointed either by express words, or such as strongly imply an appointment; but if a person makes a will without naming any executors, or if the executors named refuse to act, the Ordinary must grant administration, with the testament annexed, to some other person.

By Administration.

SECT. 9. IF a person dies totally intestate, letters of general administration will be granted by the Ordinary, that is to say, By the Bishop of the diocese, Archdeacon, or Judge of the peculiar jurisdiction, where the party, whose goods are to be administered, resided at the time of his death. Letters of administration of the goods and chattels of the wife, are granted to the husband, or his representatives: Of the husband's effects, to the widow, or next of kin; or to either, or both, at the Ordinary's discretion: Of a parent's effects, to the children; on failure of children, to the parents; then to the brothers, grandfathers, uncles, or nephews, of the deceased; (and the females of each class respectively,) and lastly, to cousins: The half-blood is admitted to the administration as well as the whole, for they are of the kindred of the intestate, and excluded from inheritances of land upon feudal principles only.

If a person dies intestate, letters of administration granted.

To whom granted.

SECT. 10. If none of the kindred will take out administration, a creditor may. If an executor refuses, or dies intestate,* administration will be granted to the residuary legatee, in exclusion of the next in kin: And on failure of all these, the Ordinary, may commit the administration to such person as he approves, or may grant him letters *ad colligendum bona defuncti*, which will make him neither an executor, nor administrator; his chief business being to keep the goods in his safe custody.

If none of the kindred administer, a creditor may.

SECT. 11. The interest vested in the executor by the will of the deceased, may be continued by the will of the executor; so that the executor of A's executor, is, to all intents and purposes, the executor and representative of A himself: But the executor of A's administrator, or the administrator of A's executor, is not the representative of A.

The interest vested in an executor may be transmitted to his executor.

SECT. 12. The duties of an executor and administrator are much the same, excepting that an executor is bound to perform a will,

Duties of an executor and administrator.

* See next Section.

which an administrator is not, unless where a testament is annexed to his administration. An executor may do many legal acts before proving the will, an administrator can do nothing till letters of administration be issued.

An executor, or administrator, with a testament annexed, must prove the will.

SECT. 13. An executor, or an administrator, with a testament annexed, must prove the will of the deceased, either upon his own oath before the Ordinary or his Surrogate, or by witnesses, in case the validity of the will is disputed; a devise by will of lands is proved in Chancery.

SECT. 14. When the will is proved, the original is deposited in the registry of the Ordinary; and a copy thereof on parchment is made out, under the seal of the Ordinary, which, with a certificate of its having been proved before him, is usually stiled the probate.

Administrator must find security.

SECT. 15. By statute 22d and 23d Car. II. cap. 10. every administrator, except an administrator *cum testamento annexo*, must enter into bond with sureties, faithfully to execute his trust.

If the goods of the deceased be within the same jurisdiction, the will must be proved before the ordinary, or administration granted by him.

If within different jurisdictions before and by the metropolitan of the province.

SECT. 16. If all the goods of the deceased lie within the same jurisdiction, a probate before the Ordinary, or an administration granted by him, are the only proper ones. But if the deceased had *bona notabilia*, or chattels to the value of five pounds sterling, in two distinct dioceses or jurisdictions, then the will must be proved, or administration taken out, before the Metropolitan of the province, by way of special prerogative; whence the court where the validity of such wills is tried, and the office where they are registered, are called the Prerogative-court, and the Prerogative-office, of the provinces of Canterbury and York.

Executor or administrator must make an inventory.

SECT. 17. An executor, or administrator, must make an inventory of all the goods and chattels, whether in possession, or action of the deceased;* which inventory he is to deliver to the Ordinary upon

* Sums due by Mortgage, are part of the personal estate of the Mortgagee, (See Observations on Estates upon Condition, Sect. 15.) and shall be paid to his Executor, unless he dispose of them otherwise in his lifetime, or by his will.

Lands in Ireland are Assets to pay Bond-debts in England.

oath, if lawfully required: And he must collect all the goods and chattels so inventoried, and pay the debts and legacies of the deceased: When these are satisfied, the surplus or residuum must be paid to the residuary legatee, if any be appointed by the will; if there be none, it goes to the executor, unless it appears from the will, (by means of a competent legacy or otherwise,) that the testator intended his executor should not have the residue, in which case it goes to the next of kin. And by the aforesaid statute 22d & 23d Car. II. cap. 10. it is enacted, That the surplusage of intestate's estates, (except of *femmes couvertes*, of whose estate the husband by statute 29th Car. II. made perpetual by 1st James II. has the sole administration,) be distributed as follows; one third to the widow, and the residue in equal proportions to the children; if they are dead, to their representatives, that is, their lineal descendants; if there are no children, or legal representatives existing, then a moiety to the widow, and a moiety to the next in kin, in equal degree, and their representatives; if no widow, the whole to the children; if neither widow, nor children, the whole shall be distributed among the next in kin, in equal degree, and their representatives; but no representatives are admitted among collaterals, farther than the children of the intestate's brothers and sisters. By the customs of the city of London, and province of York, if a deceased leaves a widow and children, his estate is divided into three parts; one of which belongs to the widow; another to the children; and the third to the administrator: If only a widow, or only children, one moiety to the widow, or children; and the other to the administrator: If neither widow, nor child, the administrator shall have the whole. By the customs of London too, the share of the children, (or orphanage part) is not fully vested in them till the age of twenty-one years; and if they die under that age, whether sole, or married, their share shall go to the other children: And these customs, as well as those of all other places having peculiar customs of distributing intestate's effects, are expressly excepted and reserved by the aforesaid statute 22d & 23d Car. II.

Must pay the debts.

How the surplus or residuum to be applied.

By Act 5th George II. cap. 7. Sect. 4. All Lands, Houses, Negroes, and other Hereditaments and Real-estates, in any of his Majesty's Plantations and Colonies in America, are liable and subject to be disposed of, for the satisfaction of debts, in the same manner as Personal-estates are.

SECT. 18. By statute 1st James II. If the father be dead, and any of his children die intestate, without wife, or issue, in the lifetime of the mother, she, and each of the remaining children, or their representatives, shall divide the effects in equal portions.

A will may be proved, letters of administration, and possession of lands obtained, by an attorney.

Possession all that is necessary to vest in the heir the estate of the ancestor.

SECT. 19. The executor, or nearest in kin, or heir at law, or devisee, of a person dying in England, Ireland, or in any of the British plantations or colonies in America; or who had goods, or chattels, in England, Ireland, or in any of these plantations or colonies, at the time of his death, may, by an attorney, prove the will,* obtain letters of administration, or enter into possession of the estate of the deceased; and actual possession is all that is necessary, by the law of England, to vest in the heir, the estate of the ancestor.

A probate before the Archbishop of Canterbury, &c. or letters of administration granted by him, vests in the executor, or administrator, an executorial power over the whole goods of the deceased. It is more regular and proper to prove the will before, or obtain letters of administration from the Ordinary of the several and peculiar jurisdictions in which the goods lie.

SECT. 20. When a will is proved before, or administration granted by, the Metropolitan of the province, as directed by Section 16. an executorial power to administer the whole goods of the deceased, not only in England, but in every part of his Majesty's dominions, (Scotland and Ireland † excepted) is vested in the executor, or administrator: However, when the goods of the deceased lie in any of his Majesty's dominions abroad, or in different parts of these dominions, it is more regular and proper to prove the will before, or obtain letters of administration from, the Ordinary of the several and peculiar jurisdictions in which the goods lie.

SECT. 21. A person applying for administration, must enter into bond, with sureties, for his faithful administration: (Sect. 15.) If he resides in Scotland, and administration of goods in England is to be granted to his attorney, a commission is issued to a Magistrate in Scotland, to see the bond properly executed by the party and his sureties, and to swear him to a due execution of the trust to be reposed in him. But if administration is to be obtained in Ireland, or

* See Letters of Attorney, No. 8, 9.

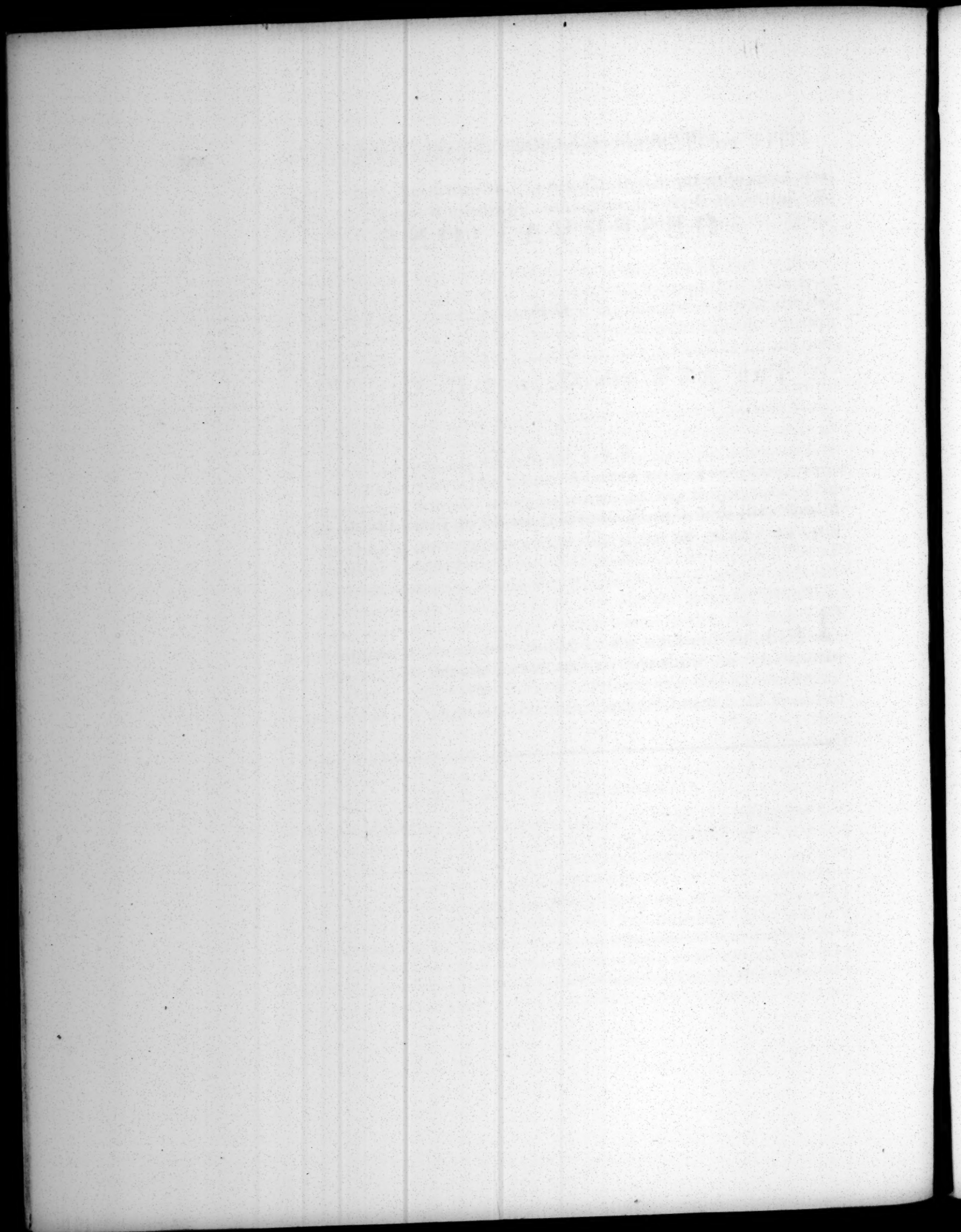
† In Ireland the will should be proved before, or administration granted by, the Ordinary in whose jurisdiction the goods and chattels of the deceased were at the time of his decease, or before, or by, the Archbishop of Armagh, Primate of all Ireland, or his representative.

in any of his Majesty's dominions abroad, by the attorney of a person resident in Great Britain, it is usual for the attorney himself to grant such security.

SECT. 22. In the cases of the nearest in kin applying by attorney for letters of administration, and of an heir at law taking possession by an attorney, it is proper, lest there should be other claimants, that the attorney be furnished by his constituent, with a certificate of his propinquity, and with an exemplification or copy from the registry, of his birth and baptism.*

Persons authorized by the nearest in kin, or heir at law, to obtain administration or possession, should be furnished by their constituent with a certificate of his propinquity to the deceased, &c.

* These are indeed seldom necessary, but when thought necessary, the certificate may be given by any person or persons of character and credibility who knew the deceased,—are acquainted with the claimant,—and know how, and in what degree, he is related to the deceased,—and the exemplification or copy, from the registry of baptisms, may be attested by a notary.—Or, in place of a certificate, an affidavit to the propinquity, and an affidavit to the authenticity of the exemplification, may be made before the chief Magistrate of any city, borough, or town-corporate, and the whole certified under the seal of such city, &c. See Affidavits, No. 18, 19.



OBSERVATIONS

ON

THE ACT 5th GEORGE II. CAP. VII.

ENTITLED,

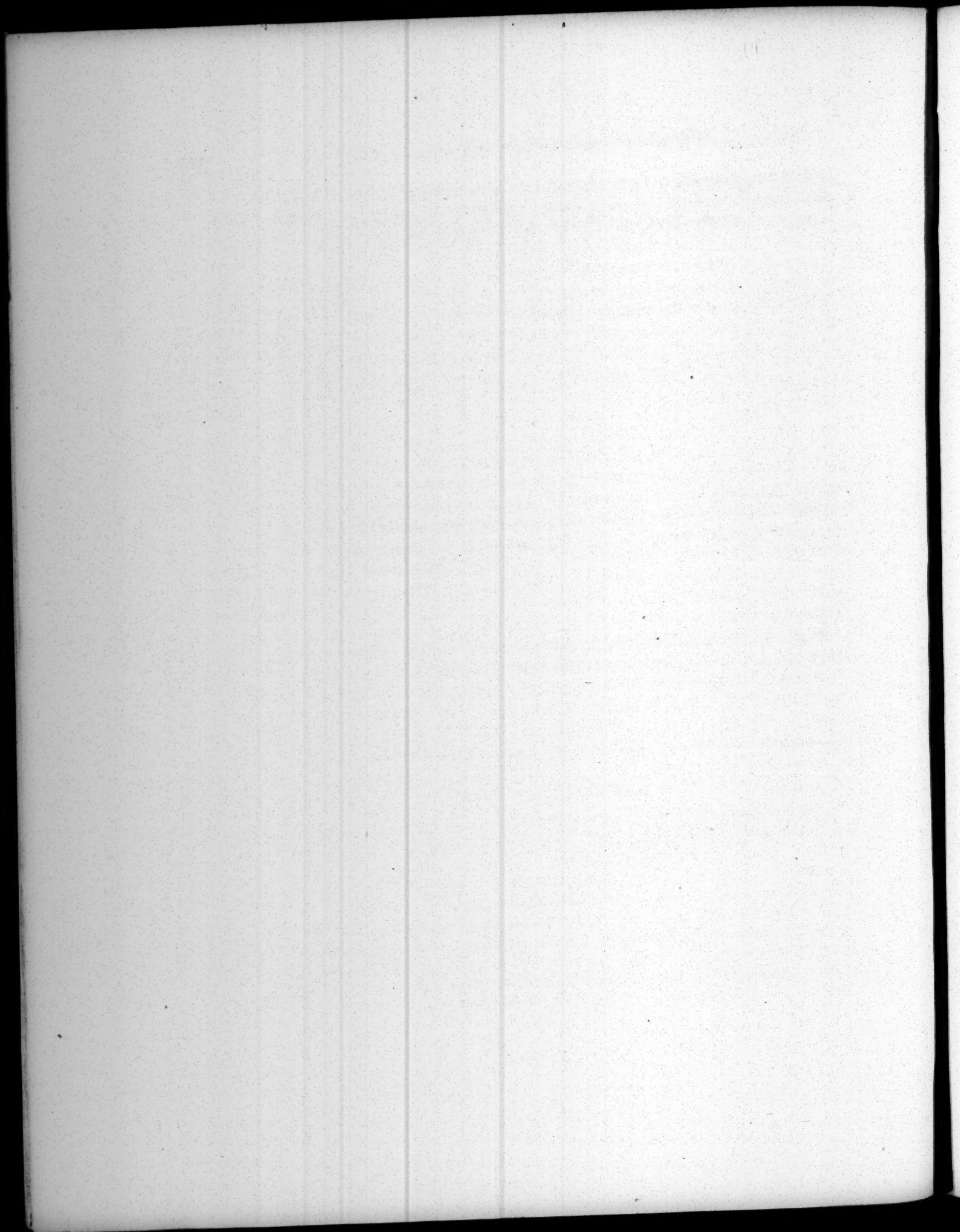
“ An Act for the more easy Recovery of Debts in his
 “ Majesty’s Plantations, and Colonies in America.”*

THIS Act has been much misunderstood, and misapprehended, particularly in Scotland. It has been thought that to obtain a judgment, all that was requisite, was the oath of the plaintiff to the justice of his demand, properly authenticated under the seal of a city,

* ABSTRACT OF THE ACT.

“ WHEREAS his Majesty’s subjects, trading to the *British* Plantations in *America*, lie under great difficulties, for want of more easy methods of proving, recovering, and levying, of debts due to them, than are now used in some of the said Plantations: *And whereas* it will tend very much to the retrieving of the credit formerly given by the trading subjects of Great Britain, to the natives and inhabitants of the said Plantations, and to the advancing of the trade of this Kingdom thither, if such inconveniences were remedied.” ‘ May it therefore please your Majesty that it may be enacted, and be it enacted by the King’s most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that

Q q



OBSERVATIONS

ON

THE ACT 5th GEORGE II. CAP. VII.

ENTITLED,

“ An Act for the more easy Recovery of Debts in his
 “ Majesty’s Plantations, and Colonies in America.”*

THIS Act has been much misunderstood, and misapprehended, particularly in Scotland. It has been thought that to obtain a judgment, all that was requisite, was the oath of the plaintiff to the justice of his demand, properly authenticated under the seal of a city,

* ABSTRACT OF THE ACT.

“ WHEREAS his Majesty’s subjects, trading to the *British* Plantations in *America*, lie under great difficulties, for want of more easy methods of proving, recovering, and levying, of debts due to them, than are now used in some of the said Plantations: *And whereas* it will tend very much to the retrieving of the credit formerly given by the trading subjects of Great Britain, to the natives and inhabitants of the said Plantations, and to the advancing of the trade of this Kingdom *ther*, if such inconveniences were remedied.” ‘ May it therefore please your Majesty that it may be enacted, and be it enacted by the King’s most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that

Q q

or corporation: Whereas the Act never meant to introduce any less or inferior degree of testimony than was formerly received, but merely to alter the mode of bringing such proof before the court;

‘ from and after the twenty-ninth day of September which shall be in the year of our
 ‘ Lord, one thousand seven hundred and thirty two, in any action or suit then depend-
 ‘ ing, or thereafter to be brought, in any court of law or equity, in any of the said
 ‘ Plantations, for, or relating to, any debt or account, wherein any person residing
 ‘ in Great Britain shall be a party, *It shall and may be lawful to, and for, the Plaintiff,*
 ‘ *or defendant, and also, to and for any witness to be examined, or made use of, in such*
 ‘ *action or suit, to verify or prove, any matter or thing, by affidavit or affidavits in writ-*
 ‘ *ing upon oath, or in case the person making such affidavit, be one of the people called Quakers,*
 ‘ *then upon his, or her, solemn affirmation made before any Mayor, or other chief Magistrate,*
 ‘ *of the city, borough, or town-corporate, in Great Britain, where, or near to which,*
 ‘ *the person making such affidavit, or affirmation, shall reside, and certified and transmitted*
 ‘ *under the common seal of such city, borough, or town-corporate, or the seal of the office of*
 ‘ *such Mayor, or other chief Magistrate, which oath and solemn affirmation, every such*
 ‘ *Mayor and chief Magistrate, shall be, and is hereby, authorized and empowered to admi-*
 ‘ *nister; and every affidavit or affirmation so made, certified, and transmitted, shall in all*
 ‘ *such actions and suits, be allowed to be of the same force and effect, as if the person or*
 ‘ *persons, making the same upon oath or solemn affirmation as aforesaid, had appeared, and*
 ‘ *sworn or affirmed the matters contained in such affidavit, or affirmation, viva voce, in*
 ‘ *open court, or upon a Commission issued for the examination of witnesses, or of any party,*
 ‘ *in any such action or suit respectively; Provided that in every such affidavit and affirma-*
 ‘ *tion, there shall be expressed, the addition of the party making such affidavit or affir-*
 ‘ *mation, and the particular place of his or her abode.*’— ‘ And be it further enact-
 ‘ ed by the authority aforesaid, that from and after the said twenty-ninth day of Sep-
 ‘ tember, one thousand seven hundred and thirty two, the houses, lands, negroes, and
 ‘ other hereditaments and real estates, situate or being within any of the said Planta-
 ‘ tions, belonging to any person indebted, shall be liable to, and chargeable with, all
 ‘ just debts, duties, and demands, of what nature or kind soever, owing by any such
 ‘ person to his Majesty, or any of his subjects, and shall and may be assets for the sa-
 ‘ tisfaction thereof, in like manner, as real estates are by the law of England liable to
 ‘ the satisfaction of debts due by bond, or other specialty, and shall be subject to
 ‘ the like remedies, proceedings, and process, in any court of law, or equity, in any
 ‘ of the said Plantations respectively, for seizing, extending, selling, or disposing of
 ‘ any such houses, lands, negroes, and other hereditaments and real estates, towards
 ‘ the satisfaction of such debts, duties, and demands, and in like manner, as personal
 ‘ estates in any of the said Plantations respectively, are seized, extended, sold, or dis-
 ‘ posed of, for the satisfaction of debts.’

and to remedy the inconveniency of sending home commissions, for the examination of witnesses, after the commencement of a cause.

The Act breaks in upon the common law of England, by which no extrajudicial proof can be admitted in any court; and therefore a proof under a city or corporation seal, requires all the essentials of a proof in open court; such as, an entire disinterestedness, and an absolute, personal, knowledge on the part of the witness, of the facts requisite to establish the plaintiff's demand, and procure a judgment.

By the law of England, under which all the British colonies are governed, a merchant putting his account in suit, against any person indebted to him, must, on the trial of the action, prove by one or more persons entirely disinterested, either the assumption and promise of the defendant to pay the demand; or the sale and delivery of the articles to the defendant, at such and such prices; or that the prices charged are reasonable; otherwise the plaintiff cannot recover.

In cases where a man may unluckily, and imprudently, have omitted furnishing himself with the means of such proof, he may have the oath of the defendant, in answer to his charges, by exhibiting a bill of complaint in a court of equity; but this method is not only expensive, but precarious, as depending solely on the defendant's oath.

Such proof as is here required, is expressly necessary, and no inconveniency or hardship can attend it, with a merchant of sufficient prudence: It is extremely easy, to make a Clerk so fully acquainted with all the transactions of his employer, as to be able to give such testimony; and in common justice, as well as in strictness of law, such proof should be had.

Hard indeed would it be, for people in the colonies, were a plaintiff's own affidavit, or the affidavit of his Clerk that he hath seen such and such entries in his employer's books, sufficient to obtain a judgment against the defendant.

A witness, as was already observed, must not only be entirely disinterested, but he must have an absolute, personal, knowledge of the

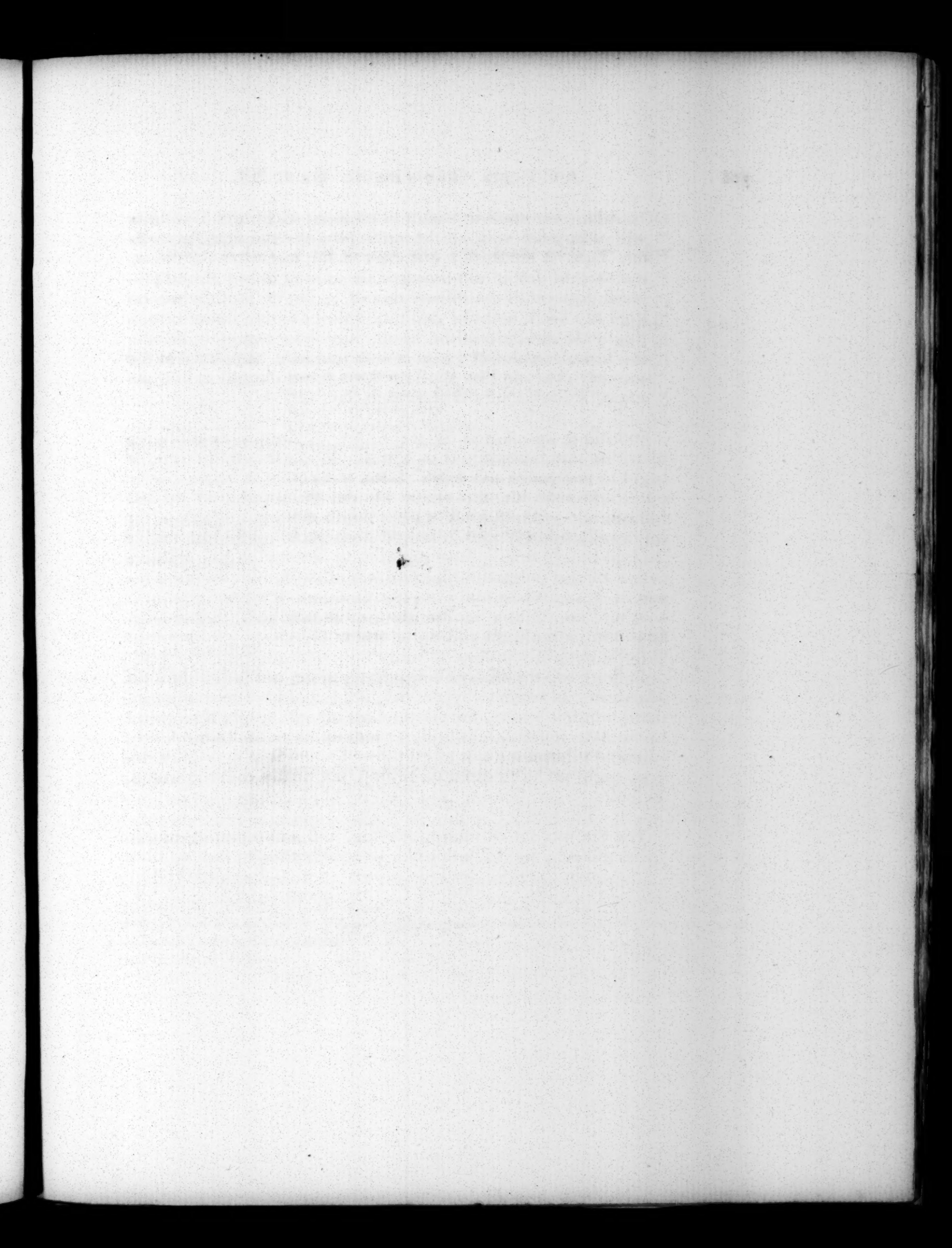
facts, which the creditor wishes to establish; such as, " That he is
" well acquainted with all the transactions in business of the credi-
" tor, That he rendered a true copy of the account to the debtor,
" and that the debtor acknowledged the account to be just, and pro-
" mised payment of the amount thereof." Or, " That the witness
" lived as a Clerk with the creditor, That he knows that the credi-
" tor, by the directions of the debtor, shipped for him on board, &c.
" the several articles of goods and merchandise, mentioned in the
" account, &c. and that the respective prices charged in said ac-
" count, are moderate and reasonable, &c. &c."*

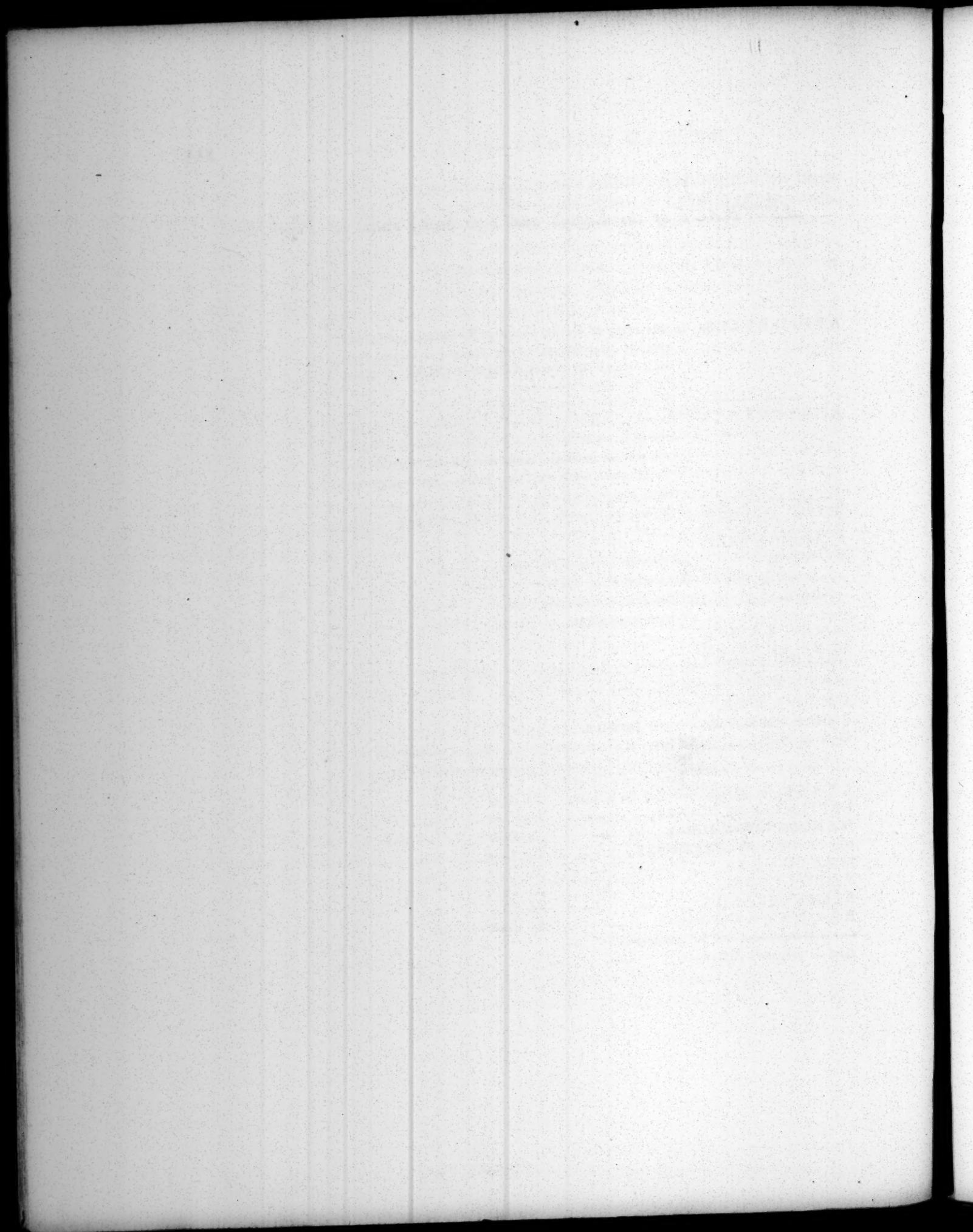
Sometimes an affidavit by the creditor is deemed necessary, to strengthen the testimony of a witness: When this is the case, it ought to be separate and distinct from, and not (as is frequently the case) conjoined with, that of the witness; the impropriety and bad consequences whereof, must be obvious on a moment's reflection; for it is an established maxim in law, that no person, who can receive the least benefit from a judgment, can be admitted to give evidence to procure that judgment; therefore such affidavit, as to the plaintiff's part of it, cannot be read; and as it is also an established maxim in law, that no evidence can be taken, or affidavit read, in part only, such affidavit could not possibly be read at all.

In Scotland, the affidavit is frequently made, not before the chief Magistrate, as required by the Act, but before some inferior Magistrate, which is wrong; for the chief Magistrate is expressly required by the Act; which Act, as being an innovation on the common law, whereby a defendant is precluded from all benefit of cross-examination, ought not to be extended beyond, but strictly confined within, its limits.

For the manner of taking, attesting, and authenticating proofs, under this Act, see Affidavits, No. 3. and Certificates, No. 1.

* See Affidavits, No. 3.





ABSTRACT of the English and Irish Stamp-duties on Paper, &c.

		<i>English.</i>			<i>Irish.</i>		
		<i>L.</i>	<i>s.</i>	<i>d.</i>	<i>L.</i>	<i>s.</i>	<i>d.</i>
AFFIDAVITS,	In any court of law or equity at Westminster, or in any court of great sessions for the counties in Wales, or in the court of the county Palatine of Chester, or copies thereof in any inferior court — — —	0	1	6			
	If not before a common Magistrate — — —				0	1	0
AGREEMENTS,	Excepting where the matter of agreement shall not exceed twenty pounds, and also excepting those for lease at rack-rent of messuages under five pounds, those for hire of labourers, artificers, manufacturers, or menial servants, and those relating to sale of goods, &c. — — —	0	6	0	0	2	6
APPRENTICESHIP,	Indentures of, <i>see deed, for the English stamp-duty</i> — — —				0	2	6
ASSIGNMENTS	— — — — —	0	6	0	0	2	6
BARGAIN & SALE	— — — — —	0	10	0	0	2	6
BONDS,	As security for payment of money — — —				0	1	0
	If not above 100l. sterling — — —	0	5	0			
	If above 100l. and under 500l. — — —	0	10	0			
	If 500l. or upwards — — —	0	15	0			
CHARTER-PARTY	— — — — —	0	6	0	0	2	6
CONFIRMATION	— — — — —	0	6	0	0	2	6
COVENANT,	Writ of, for levying a fine — — —	0	15	0			
DEEDS	Of Conveyance to land — — —	0	6	0	0	2	6
EXCHANGE,	<i>See Deed.</i>						
FEOFFMENT,	<i>See Deed.</i>						
GRANT,	Of land in fee, not particularly charged under the Great Seal, Seal of Exchequer, dutchy or county Palatine of Lancaster, or Privy Seal — — —	6	0	0			
LEASE, or Bargain and Sale for a year,	<i>See Deed</i> — — —				0	2	6
LETTERS OF ATTORNEY,	<i>See Deed</i> — — —				0	2	6
MANUMISSION of slaves,	<i>See Deed</i> — — —						
MARRIAGE-SETTLEMENTS,	<i>See Deed</i> — — —				0	2	6
MORTGAGES,	<i>See Deed</i> — — —				0	2	6
PARTITION,	<i>See Deed</i> — — —				0	2	6
RECONVEYANCE,	<i>See Deed</i> — — —				0	2	6
RELEASES to land,	<i>See Deed</i> — — —				0	2	6
	if for enrolment, — — —	0	10	0			
And all Obligatory Instruments	— — — — —	0	6	0	0	2	6

111

STATE OF NEW YORK

IN SENATE,
January 1, 1901.

REPORT
OF THE
COMMISSIONER OF THE LAND OFFICE,
IN RESPONSE TO A RESOLUTION
PASSED BY THE SENATE
MAY 1, 1899.

ALBANY:
J. B. LIPPINCOTT & CO.,
PRINTERS,
1899.

THE STATE OF NEW YORK,
COUNTY OF ALBANY,
ss. I, the undersigned, Clerk of the Senate,
do hereby certify that the foregoing
is a true and correct copy of the
report of the Commissioner of the Land Office,
as the same appears from the records of the Senate.

	Page	Page
Agreements between a merchant or trader in Scotland, and a factor or agent in England	33	
— for a clerk or book-keeper to go abroad	34	
— for a tradesman to go abroad, and exercise his trade there	35	
—, or indenture of apprenticeship to a merchant abroad	36	
—, or indenture of covenants, for a book-keeper to serve abroad, with liberty to leave his service if he has not his health	38	
— for a workman to go abroad	39	
Alienation, by mat- } viz. { by fine		279
ter of record, } by recovery		286
Alienation by special custom		291
— by devise		293
Aliens		259
Ancient Demefne	<i>See Tenures.</i>	
Apparent Heir	<i>See Heir.</i>	
Appointment of a Guardian		41
Apprenticeship, Indenture, or Articles of	<i>See Agreements, No. 12.</i>	
Arbitration	<i>See Bonds.</i>	
Archbishops		239
Archdeacons		ib.
Assets		256 257
Assignment		272
— of a mortgage in fee, by the mortgagee, and a confirmation by the mortgager in consideration of a farther sum of money lent by the assignee, or second mortgagee	43	
— of a mortgage by demise	46	
— of a mortgage by demise, and of a bond for payment of the mortgage-money, and performance of covenants	48	
— of a mortgaged term in trust to attend the inheritance	49	
— of a mortgaged term, to a trustee to prevent a merger	51	
— to a lease	52	
— to a lease, by way of mortgage	54	
— to a lease by endorsement	55	
— of a ship	ib.	
— of a debt for securing payment of a debt	57	
— of a bond for payment of money	58 60	
— of a bond for performance of covenants	60	
— of a military officer's pay for securing payment of a debt	62	
— to an apprentice	64	
— of a patent, for the sole use of an invention	65	
Assurances	<i>See Alienation.</i>	
B		
Bankrupt-Act English, Abstract of		265
Bargain and Sale	67	275
Base or Qualified Fees	<i>See Estates.</i>	
Bishops		259
Bonds		277
— for payment of money	69	
— at different times	70	
— quarterly	ib.	
— for payment of an annuity	ib.	
— for payment of money according to a Mortgage	71	
— to perform covenants	ib.	
— to make and deliver conveyances	ib.	

I N D E X.

315

	Page	Page
Bonds to execute an assignment	72	
to suffer the obliger's wife to make a will	ib.	
to pay money and perform covenants according to a mortgage	73	
of arbitration	74	
of indemnity	ib.	
Book-land		224
Borough-English		223
Burgage	<i>See Tenures.</i>	
C		
Certificates, by a chief Magistrate, of a proof of debt, in pursuance of the Act 5th George II.	77	306
by a Magistrate of a proof of the execution of a deed	78	262
by a notary, that a Magistrate attesting an affidavit, &c. is really a Magistrate	ib.	267
<i>Cestui que use</i>		273
Charter land		224
Charter Party	79	
Chattels, real		295
, personal		296
Chivalry,	<i>See Tenures.</i>	
Codicil	218	298
Colleges		269
Concord, in a fine,	<i>See Acknowledgments, No. 1.</i>	
Conditional Fees,	<i>See Tenures.</i>	
Confirmations		271
of indentures of lease and release by way of mortgage	81	
of indentures of lease and release by way of mortgage, wherein the parcels are more particularly described, and an agreement as to paying and reducing the interest monies, and as to ensuring the premises from loss by fire	83	
of a mortgage, and indenture of release by way of security for a farther sum of money	175	
Copy-hold	<i>See Tenure.</i>	
Corporations		259
Courtesy		234 296
Covenants to levy a fine	87	
that bargainer is lawfully seized	ib.	
that a lease assigned is good	88	
that bargainer hath power to convey	ib.	
for peaceable enjoyment	ib.	
for peaceable enjoyment during a term of years	89	
free from encumbrances	ib.	
that a mortgage is not encumbered	ib.	
for farther assurance	90	
assurances to be to the use of the bargainee	91	
bargainer not to encumber	ib.	
Custom, Alienation by special	<i>See Alienation.</i>	
D		
Deans		259
Debts	57	
<i>Dedimus Potestatem</i>		280 283 284

	Page	Page
Deeds —	—	255
— Poll —	—	ib.
— of indenture —	—	ib.
—, essential requisites of —	—	257
—, several species of —	—	267
Defeasance —	—	272
— of a mortgage in fee —	93	—
Demefne, ancient —	<i>See Tenure.</i>	—
Defcent, Title to things real by —	—	251
Devife, Alienation by —	<i>See Alienation, and</i>	230
Devifes, Executory —	—	248
Dower —	—	235
— by the common law —	—	ib.
— by particular custom —	—	ib.
— <i>ad optium ecclesiæ</i> —	—	ib.
— <i>ex assensu patris</i> —	—	236
—, bar of —	—	286
Durefs —	—	259
E		
Ecclesiastical —	—	259 269
Elegit —	<i>See Estates.</i>	—
Entail —	<i>See Estates.</i>	—
Estates of freehold, of inheritance —	—	229
— Viz. —	—	—
— in fee-simple —	—	ib.
— in fee, base or qualified —	—	ib.
— in fee conditional —	—	231
— in fee-tail —	—	ib.
— in fee-tail general —	—	232
— in fee-tail special —	—	ib.
— in tail-male general —	—	ib.
— in tail-female special —	—	ib.
Estates of Freehold not of inheritance, but for life only —	—	233
— Viz. —	—	—
— in tail, after possibility of issue extinct —	—	234
— by courtesy —	—	ib.
— in dower —	—	235
Estates less than freehold —	—	237
— Viz. —	—	—
— for years —	—	ib.
— at will —	—	ib.
— by sufferance —	—	238
Estates upon condition —	—	239
— Viz. —	—	—
— upon condition implied —	—	ib.
— upon condition expressed —	—	ib.
— in gage, or pledge —	—	240
— by statute-merchant, and statute-staple —	—	243
— by elegit —	—	ib.
Estates in remainder —	—	245
— in reversion —	—	249
Exchange —	97	270
Executor —	—	298
Executory devise —	—	248

I N D E X.

317

	<i>Page</i>		<i>Page</i>
F			
Fee simple			
— base or qualified		<i>See Estates.</i>	
— conditional		"	
— tail			
Felony	—	—	259
Feoffment	—	—	267
Fine, Assurance by	—	<i>See Alienation.</i>	
Folkland	—	—	234
Frankalmoign	—	<i>See Tenures.</i>	
Freehold	—	<i>See Estates.</i>	
Free-focage	—	<i>See Tenures.</i>	
G			
Gavelkind	—	<i>See Tenures.</i>	
Gifts	—	—	268
— of land	—	—	103
— of a personal estate	—	—	104
Grants	—	—	ib.
— of a reversion	—	—	105
— of a rent charge	—	—	107
— of an annuity	—	—	108
Guardian, Appointment of a	—	—	41
—, Letter of attorney by a, to take possession of an estate for his ward	—	—	144
H			
Heir-apparent	—	—	252 254
— presumptive	—	—	
Husband and wife	—	—	117 122 138 { 258 263 269 283 285 295 296
I			
Ideots	—	—	259
Infants	—	—	257
Inheritance, Estates of	—	<i>See Estates.</i>	
—, Laws of	—	<i>See Descent</i>	
Intestates	—	—	136
Jointure	—	—	299 301 236
K			
Knight-service	—	<i>See Tenures.</i>	
L			
Lease and Release	—	—	276
— of two plantations, sugar-works, and negroes	—	—	111
— by husband and wife, of a plantation, sugar-work, and negroes	—	—	
— in trust, to be sold for the benefit of the granters	—	—	117
— by husband and wife, with a covenant to levy a fine, to bar the	—	—	
— right of dower	—	—	122
— for levying a fine, and suffering a recovery	—	—	125
— of a mortgage in fee, and of a bond for payment of the mortgage	—	—	
— money	—	—	129
Letters of Attorney, to receive debts, take payment in, or security on, land, &c.	—	—	
— to sell and dispose of such land, and to release or surrender, and renew mortgages, &c.	—	—	133

	Page	Page
Letters of Attorney, to receive a legacy	135	
_____ , to receive the distributive share of an intestate's estate	136	
_____ , to receive money due by bond	137	
_____ , to receive and discharge rents	ib.	
_____ , to take possession of lands for a purchaser	138	
_____ , from husband and wife to sell a plantation, sugar-work, and negroes, and to execute the deeds of conveyance	ib.	
_____ , from an heir at law to take possession of a plantation, &c. and to let the same	140	
_____ , from the nearest in kin to procure letters of administration	141	
_____ , from executors to settle accounts, receive debts, take possession of a plantation, sell or let the same, and to execute and deliver the deeds of conveyance	142	
_____ , from a guardian to take possession of an estate for his ward	144	
_____ , to make a partition of a plantation	145	
_____ , to sue for and receive money due on a mortgage, and to execute conveyances	146	
_____ , to surrender copy-hold lands to the use of a will	147	
_____ , to dissolve a partnership	ib.	
_____ , to vote in the choice of assignees of an English bankrupt's estate	149	
_____ , to sign consent to the commissioners of bankrupt, certifying the Great Seal, that the bankrupt hath conformed, and to consent to the assignees commencing suits in equity, &c. and to receive dividends	150	
_____ , to receive the statutable allowance of a bankrupt	152	
_____ , to receive a military officer's half-pay	153	
_____ , or warrant of, to suffer a recovery	ib.	
Life, Estates for		233
Livery of Seizin		
_____ in deed	} See Seizin.	
_____ in law		
M		
Manor		223
Manumission of slaves	155	
Marriage, Title to things personal by		295
_____ Settlements	22 157	
Mortgage	204 206	240
_____ in fee, by way of lease and release, of two plantations, sugar works, and negroes	163	
_____ in fee, by way of lease and release of lands in England, in security of a debt	172	
_____ confirmation of, and indentures of release by way of security for a farther sum of money, &c.	175	
_____ by demise	180	
_____ of copy-hold premises	183	
_____ endorsement on, charging the lands with a farther sum	184	
_____ of lease-hold premises	54	
N		
Negroes		301
Non-sane Memory		259
Nuncupative Will	See Wills.	

I N D E X.

319

	<i>Page</i>	<i>Page</i>
O		
Orphanage part	—	301
P		
Paraphernalia	—	296
Parsons	—	259 269
Partition	—	270
Possession	—	302
— things in	—	296
Prebends	—	259
Premunire	—	ib.
Presumptive heir	—	—
<i>See Heir.</i>		
<i>Pur autre vie</i>	—	233
Purchase, Title to things real by	—	254
Pure Villenage	—	—
<i>See Villenage.</i>		
Q		
Qualified Fees	—	—
<i>See Estates.</i>		
R		
Receipts	—	189
Reconveyance, of an estate mortgaged in fee, to the heir of the mortgager	—	—
by lease and release	—	191
Record, Assurance by matter of	—	—
<i>See Alienation.</i>		
Recovery, Assurance by	—	—
<i>See Alienation.</i>		
Release	—	270
— general, a	—	195
— to an executor for a legacy	—	ib.
— to an executor in trust	—	196
— of equity of redemption on a mortgage	—	197
— of a bond lost or mislaid	—	198
— of an executorship	—	199
— of title to lands	—	200
Remainder	—	—
<i>See Estates.</i>		
Reversion	—	—
<i>See Estates.</i>		
Revocation of Uses	—	213
S		
Seizin, Livery of	—	—
— in law	—	—
— in deed	—	—
— letter of attorney to deliver	—	101
Serjeanty, Grand	—	—
<i>See Tenures.</i>		
—, Petit	—	—
<i>See Tenures.</i>		
Socage	—	—
<i>See Tenures.</i>		
Statute-merchant	—	—
<i>See Estates.</i>		
Statute-staple	—	—
<i>See Estates.</i>		
Sufferance	—	—
<i>See Estates.</i>		

{ 267 268 269
 271 272
 268
 ib.

	Page	Page
Letters of Attorney, to receive a legacy	135	
_____ , to receive the distributive share of an intestate's estate	136	
_____ , to receive money due by bond	137	
_____ , to receive and discharge rents	ib.	
_____ , to take possession of lands for a purchaser	138	
_____ , from husband and wife to sell a plantation, sugar-work, and negroes, and to execute the deeds of conveyance	ib.	
_____ , from an heir at law to take possession of a plantation, &c. and to let the same	140	
_____ , from the nearest in kin to procure letters of administration	141	
_____ , from executors to settle accounts, receive debts, take possession of a plantation, sell or let the same, and to execute and deliver the deeds of conveyance	142	
_____ , from a guardian to take possession of an estate for his ward	144	
_____ , to make a partition of a plantation	145	
_____ , to sue for and receive money due on a mortgage, and to execute conveyances	146	
_____ , to surrender copy-hold lands to the use of a will	147	
_____ , to dissolve a partnership	ib.	
_____ , to vote in the choice of assignees of an English bankrupt's estate	149	
_____ , to sign consent to the commissioners of bankrupt, certifying the Great Seal, that the bankrupt hath conformed, and to consent to the assignees commencing suits in equity, &c. and to receive dividends	150	
_____ , to receive the statutable allowance of a bankrupt	152	
_____ , to receive a military officer's half-pay	153	
_____ , or warrant of, to suffer a recovery	ib.	
Life, Estates for		233
Livery of Seizin		
_____ in deed	} See Seizin.	
_____ in law		
M		
Manor		223
Manumission of slaves	155	
Marriage, Title to things personal by		295
_____ Settlements	22 157	
Mortgage	204 206	240
_____ in fee, by way of lease and release, of two plantations, sugar works, and negroes	163	
_____ in fee, by way of lease and release of lands in England, in security of a debt	172	
_____ confirmation of, and indentures of release by way of security for a farther sum of money, &c.	175	
_____ by demise	180	
_____ of copy-hold premises	183	
_____ endorsement on, charging the lands with a farther sum	184	
_____ of lease-hold premises	54	
N		
Negroes		301
Non-sane Memory		259
Nuncupative Will	See Wills.	

319

	O	Page	Page
Orphanage part	— — — —	—	301
	P		
Paraphernalia	— — — —	—	296
Parsons	— — — —	—	259 269
Partition	— — — —	187	270
Possession	— — — —	—	302
—— things in	— — — —	—	296
Prebends	— — — —	—	259
Premunire	— — — —	—	ib.
Presumptive heir	See Heir.		
Pur autre vie	— — — —	—	233
Purchase, Title to things real by	— — — —	—	254
Pure Villenage	See Villenage.		
	Q		
Qualified Fees	See Estates.		
	R		
Receipts	— — — —	189	
Reconveyance, of an estate mortgaged in fee, to the heir of the mortgager by lease and release	— — — —	191	
Record, Assurance by matter of	See Alienation.		
Recovery, Assurance by	See Alienation.		
Release	— — — —	—	270
—— general, a	— — — —	195	
—— to an executor for a legacy	— — — —	ib.	
—— to an executor in trust	— — — —	196	
—— of equity of redemption on a mortgage	— — — —	197	
—— of a bond lost or mislaid	— — — —	198	
—— of an executorship	— — — —	199	
—— of title to lands	— — — —	200	
Remainder	See Estates.		
Reversion	See Estates.		
Revocation of Uses	— — — —	213	276
	S		
Seizin, Livery of	— — — —	—	{ 267 268 269 271 272
—— in law	— — — —	—	268
—— in deed	— — — —	—	ib.
—— letter of attorney to deliver	— — — —	101	
Serjeanty, Grand	See Tenures.		
——, Petit	See Tenures.		
Socage	See Tenures.		
Statute-merchant	See Estates.		
Statute-staple	See Estates.		
Sufferance	See Estates.		

	Page	Page
Surrender		273
— of a lease to the widow, and executrix of the lessor	203	
— of a mortgage, where the mortgaged premises have been sold, and the mortgagee paid his principal and interest out of the price	204	
— of a mortgage on payment of the mortgage money	205	
— of a mortgage by the executor of the mortgagee	206	
— of a copy-hold estate	207	
T		
Tail	<i>See Estates.</i>	
Tenures		221
— in chivalry		222
— in free-socage		ib.
— in absolute or pure villenage		ib.
— in privileged villenage, or villein-socage		ib.
— by grand serjeanty		ib.
— by petit serjeanty		223
— in burgage		ib.
— in gavelkind		ib.
— copy-hold		ib.
— in ancient demesne		226
— in <i>frankalmoin</i>		227
Testament, Title to things personal by		297
<i>Testamento annexo</i> , administration <i>cum</i>		300
Treason		259
U		
Uses		273
—, Statute of		ib.
—, Indenture to lead the, of a fine	209	
—, —, of a recovery	210	
—, Deed to declare the, of a fine and recovery	212	
—, Revocation of	213	
— in <i>esse</i>		290
— in <i>posse</i>		ib.
V		
Vicars		259
Villein		225
Villenage	<i>See Tenures.</i>	
— privileged	<i>See Tenures.</i>	
— pure	<i>See Tenures.</i>	
W		
Wife and Husband	<i>See Husband and Wife.</i>	
Wills	<i>See Alienation by Devise, and Title to Things Personal by Testament.</i>	
— of lands		215
— of goods		216
— nuncupative		217
Will, Estates at	<i>See Estates.</i>	
Y		
Years, Estates for	<i>See Estates.</i>	

